The German system of corporate governance: characteristics and changes

Jürgens, Ulrich; Rupp, Joachim

Veröffentlichungsreihe der Abteilung **Regulierung von Arbeit**
des Forschungsschwerpunkts Technik-Arbeit-Umwelt des
Wissenschaftszentrum Berlin für Sozialforschung

FS II 02-203

The German System of Corporate Governance
Characteristics and Changes

Ulrich Jürgens, Joachim Rupp

With the Collaboration of Jürgen Caspar
and Bärbel Jäschke-Werthmann

Berlin, May 2002

Wissenschaftszentrum Berlin für Sozialforschung gGmbH (WZB)
Reichpietschufer 50, 10785 Berlin
Telefon: (030) 254 91-0

Abstract

As Germany enters the 21st century, the traditional system of corporate governance, often referred to as "Deutschland AG", has come under intense pressure to change. This report seeks to analyze the recent dynamics of the system to assess the extent to which they have already led to an erosion of the traditional characteristics.

Many of the distinct features of the German system have shown strong resilience despite the pressure for change, while other features seem to have unraveled quickly. The areas in which these changes appeared to have emerged most profoundly and quickly are in the role of banks and in the role of financial markets. Germany is often cited as a classical case of "non-shareholder value orientation", whose production-oriented, long-term, risk adverse and consensus-driven values have often been contrasted with the "Anglo-Saxon" approach. The forces currently driving the German political economy towards a shareholder-value orientation can be summarized as follows: State measures to deregulate financial markets; pressure of managers of investments funds and pension funds, in particular from the USA; responses to product-market changes and the internationalization of production.

These factors have had an input on all three pillars of the traditional German system: 1. The dominant role of the banks in a complex system of cross-shareholding and in company financing; 2. the system of industrial co-determination; 3. the production-centered, company-centered management system. But the developments are still recent and ambiguous. The question is whether these forces will initiate major and permanent change in the operating principles of the German system or whether they will be superseded by the system's traditional logic. Our report explores these issues in a preliminary way at a point of time when it is not possible to provide a definite answer to what these changes portend.

Zusammenfassung

Mit dem Übergang in das 21. Jahrhundert gerät das traditionelle deutsche System der Corporate Governance – oft als „Deutschland AG" bezeichnet – unter starken Veränderungsdruck. Die vorliegende Untersuchung beschreibt die gegenwärtigen Veränderungstendenzen und analysiert, inwieweit diese bereits zu einer Erosion des traditionellen Systems geführt haben.

Einige der Besonderheiten des deutschen Systems haben sich – so wird in der Studie gezeigt – als außerordentlich veränderungsresistent erwiesen, bei anderen Merkmalen zeigt sich ein rascher Auflösungsprozess. Die stärksten Veränderungen sind hinsichtlich der Rolle der Banken sowie der Finanzmärkte zu verzeichnen. Deutschland wird oft als klassischer Fall einer Nicht-Shareholder-Value-Orientierung angeführt, das mit seiner Langfristorientierung und Risikoaversion, seiner Produktionszentriertheit und Konsensorientierung ein Gegenmodell zum angelsächsischen Ansatz darstellt. Die wichtigsten Triebkräfte für Veränderungen des deutschen Modells hin zu einer Shareholder-Value-Orientierung sind zum einen staatliche Maßnahmen zur

Deregulierung der Finanzmärkte, Druck von Seiten internationaler Investment- und Pensionsfonds, insbesondere aus den USA, sowie Reaktionen auf die Entwicklungen auf den Produktmärkten und die Globalisierung.

Auswirkungen dieses Veränderungsdrucks lassen sich für jede der drei tragenden Säulen des traditionellen deutschen Systems feststellen: 1. die Rolle der Banken im Rahmen eines komplexen Systems der Eigentumsverflechtungen und Unternehmensfinanzierung; 2. das System der Mitbestimmung und 3. die Produktions- und Unternehmenszentrierung des leitenden Managements. Allerdings handelt es sich um recht neue und in ihrer Wirkung kaum abschätzbare Entwicklungen. Die Frage, inwieweit sie zu einem grundlegenden Wandel des deutschen Systems der Corporate Governance führen, muss daher zum gegenwärtigen Zeitpunkt offen bleiben.

Contents

Introduction

The hostile takeover of the German firm Mannesmann by the UK company Vodafone AirTouch in 1999 has often been cited as a turning point in the transformation of the German system of corporate governance. There is no doubt about the size and the highly symbolic importance of the takeover. The target, Mannesmann, had some 30,000 employees and a turnover of 40 billion DM and vastly outweighed Vodafone AirTouch with its 12,600 employees and 11 billion DM turnover. A company with a history that dates back 109 years was taken over by a firm that is 15 year old! In terms of corporate governance and the composition of its supervisory board, Mannesmann is very representative of "Rhenish capitalism": the CEO of Deutsche Bank traditionally held the chairmanship of the supervisory board and the head of the IG Metall (or his deputy) traditionally held the position of first deputy at Mannesmann. As regards company policy and industrial activities, Mannesmann has, since the early 1980s, transformed itself from a coal, iron, and steel based/old economy company into a telecommunication/new economy company and has become a role model for change management and renewed German industrial dynamism. At the time of the hostile takeover, the company was in the final phase of the transformation process. The traditional sectors steel, mechanical engineering, and automotive technology were to be spun off to an independent enterprise.

In many regards the case has set a precedent. It is the first successful hostile takeover in Germany among only a few cases where this has been tried (e.g. Pirelli – Continental in September 1990). It is the first case of a hostile cross-border takeover and it took place with the high-profile involvement of the IG Metall. The successful outcome for Vodafone Airtouch was achieved with the consent of the IG Metall. It is the first instance of such high-level industrial restructuring in which the German house bank has not played a major role. The Mannesmann case is also a precedent insofar as the takeover target was only a small segment of the company with the remaining 90% facing the prospect of also being put on the block. It was a direct confrontation between the old and the new economies. The Vodafone takeover bid was a pure stock swap, Vodafone shares for Mannesmann shares. There was no question of direct financing.

In the conclusion of this paper on the German system of corporate governance, we will be returning to this case to look more closely at the role played by co-determination and the manner in which management controlled the introduction of shareholder value management in Mannesmann. This case highlights how the processes of change we describe throughout this paper appear to be intensifying. It represents an important learning experience both for German firms and institutions as well as for those seeking to understand the evolution of German corporate governance. To develop such understanding, we feel it is important to position current changes in light of the underlying structure of the traditional system of corporate governance in Germany.

For this reason, we will discuss in detail the three pillars on which the traditional German system of corporate governance rests. These are:

i. the dominant role of the banks in a complex system of cross shareholding and in company financing;
ii. the system of industrial co-determination;
iii. the production-oriented, company-centered management system.

As Germany enters the new millennium, this system, often referred to as "Deutschland AG", has been coming under intense pressure to change. This report seeks to analyze the recent dynamics of the system and to assess the extent to which they have already led to an erosion of the traditional characteristics.

Many of the distinct features of the German system have shown strong resilience despite this pressure for change, while other features seem to have unraveled very quickly. The areas in which theses changes appear to have emerged most profoundly and quickly are in the role of banks and, secondly, in the role of the financial markets. Germany is often cited as a classical case of "non-shareholder value orientation", whose production-oriented, long-term, risk adverse and consensus-driven values have often been contrasted with the "Anglo-Saxon" approach. The forces currently driving the German political economy towards a shareholder value orientation are the major drivers of change within the German corporate governance system. These forces can be summarized as follows: state measures to deregulate financial markets; pressure from managers of investment funds and pension funds, in particular from the USA; responses to product market changes and the internationalization of the production.

These factors have been having an impact on all three aforementioned pillars of the German system but the developments, albeit very interesting, are still recent and ambiguous. The question that remains is whether these forces will initiate major and permanent change in the operating principles of the German system or whether, and when, they will be superseded by the system's traditional logic? Our report explores these issues in a preliminary way at a point in time when it is not possible to provide the definite answer to what these changes portend.

The report is structured in a straightforward way. Section 1 describes the central pillars of the German system of corporate governance – the dominant role of banks (1.1), the system of co-determination (1.2) and the company-centered management system (1.3). The subsequent four sections describe the dynamics apparent in these institutional elements of the German system of corporate governances. Section 2 discusses changes in the state measures to deregulate financial markets and the debate about a corporate takeover act. Section 3 discusses changes in company financing and the role of stock markets. Section 4 discusses changes in management incentive structures oriented towards the stock market performance of companies, and section 5 discusses changes in the role of labor as part of the system of corporate governance.

From this analysis, we conclude that different elements of the German system of corporate governance are changing at different paces. The financial aspect is emphasized as one where the transformation is at its most marked and a number of significant regulatory changes have occurred to accommodate developments in the financial sphere. Employment practices and regulations in Germany have remained more stable and have proven more resistant to the forces of change outlined above. The Mannesmann case is used to highlight how the on-going transformation process of German corporate governance has shifted gear.

This discussion paper arose in the context of a project on "Corporate Governance, Innovation and Economic Performance in the EU". This project is funded by the Targeted Socio-economic Research (TSER) Program of the European Commission under the 5th Framework Program, European Commission (contract no.: SOE 1-CT 98-114; project no. 053), coordinated by William Lazonnick and Mary O'Sullivan at the European Institute of Business Administration (INSEAD). The paper is essentially an updated and expanded version by Ulrich Jürgens, Bärbel Jäschke-Werthmann and Jürgen Caspar of the discussion paper on "Corporate Governance und Shareholder Value in Deutschland" (FS II 00-202) by Ulrich Jürgens, Joachim Rupp, Katrin Vitols, with the collaboration of Bärbel Jäschke-Werthmann, which appeared in March 2000.

The country report on Germany is part of the General Report delivered to the EU by the project group. We gratefully acknowledge suggestions and comments on this report from Mary O'Sullivan.

1. Traditional Characteristics

This section begins with a brief outline of the traditional characteristics of the German system of corporate governance outlining the system of cross shareholdings and the dominant role of banks. It then details the German system of co-determination and explains the distinctive system of management in Germany which is seen as being production-oriented and company-centered.

1.1 The System of Cross Shareholdings and the Role of the Banks

In Germany, share ownership is heavily concentrated with over half of all shares being owned by (non-financial) companies, banks and insurance companies. Whether the companies are financial or non-financial, they are often part of networks of cross holdings where the main motive of shareholding is to strengthen long-term relationships and business interdependencies, and this behaviour involves long term commitment. In Germany, only a minor role is played by the value orientation that focuses on return on equity and the value-based behaviour of trading stocks. This point is recognized in a recent OECD report on the German system of corporate governance:

> "The importance of cross-holdings of shares both among non-financial enterprises and between banks and non-financial enterprises is a principal feature of

Table 1: Degree of ownership concentration

Proportion of stock owned (%)	Distribution (%)					
	G	F	US	UK	CH	NL
– 4.9	9.5	37.3	95.0	48.6	17.8	23.7
5 – 9.9	7.8	14.2	3.5	31.0	17.6	30.0
10 – 24.9	17.8	15.1	1.4	10.5	17.9	9.6
25 – 49.9	13.9	9.4	0.1	2.6	15.6	10.1
50 – 74.9	12.9	8.1	-	2.4	8.0	6.8
75+	38.1	15.8	-	4.9	23.1	19.7
N = 100	821.0	1224.0	5925.0	1859.0	614.0	603.0

Unit of analysis (N): shareholdings (= proportion of stock)
Germany (G): 650 largest firms (1993), N=821 shareholdings
France (F): 500 largest firms (1997), N=1224 shareholdings
United States (US): 250 largest firms (1997), N=5925 shareholdings (only those larger than 0,5%)
United Kingdom (UK): 520 largest firms (1993), N=1859 shareholdings
Switzerland (CH): 300 largest firms (1995), N=157 shareholdings
Netherlands (NL): 300 largest firms (1995), N=244 shareholdings

Source: Windolf (2000)

German corporate governance aimed at cementing long-term relationships between firms." (OECD 1995: 97).

There is a notably high concentration of share ownership in Germany. In a study of the degree of ownership concentration in various countries (see table 1), only 9.5% of shareholdings in the 650 largest German companies held less than 5% of the proportion of stock of these companies compared to 95% of shareholdings in the largest 250 US companies. At the same time 38% of the German shareholdings held more than 65% of company stocks compared to less than 0.1% of the US shareholders. (Windolf 2000: 22)

The high level of ownership concentration in Germany is also apparent if the situation is considered in terms of legal form. Over 67% of all limited partnerships belong to one owner (table 2). Even in the case of stock corporations ownership is strongly concentrated. In almost 72% of stock corporations one owner holds more than 50% of shares.

Table 2: Ownership concentration (status December 1999)

Legal form	Firms	Of which with information on ownership relations	Firms with owners, percentage of shares held	
			>50%	>100%
AG	5.611	3.611	71.67	35.42
GmbH	534.528	528.882	69.54	43.18
KG	20.847	20.483	78.68	67.06
GmbH & Co KG	74.299	73.339	69.15	45.55
OHG	17.030	7	71.43	42.86

Source: Deutsches Aktieninstitut e.V. (ed.) 2001, DAI-Factbook 2001, Frankfurt a.M. 2001, 01-2, own calculations

The banks directly held 13% of all German shares in 2000, much the same as in 1991 (Deutsches Aktieninstitut 2001: 08.1-3). Deutsche Bank and Dresdner Bank together control the greatest market value (Boehmer 1998: 40). Apart from the banks, insurance companies, which hold 9%, and investment funds—which can also be regarded as part of the finance sector and hold 15%—play an important role in the stock market.

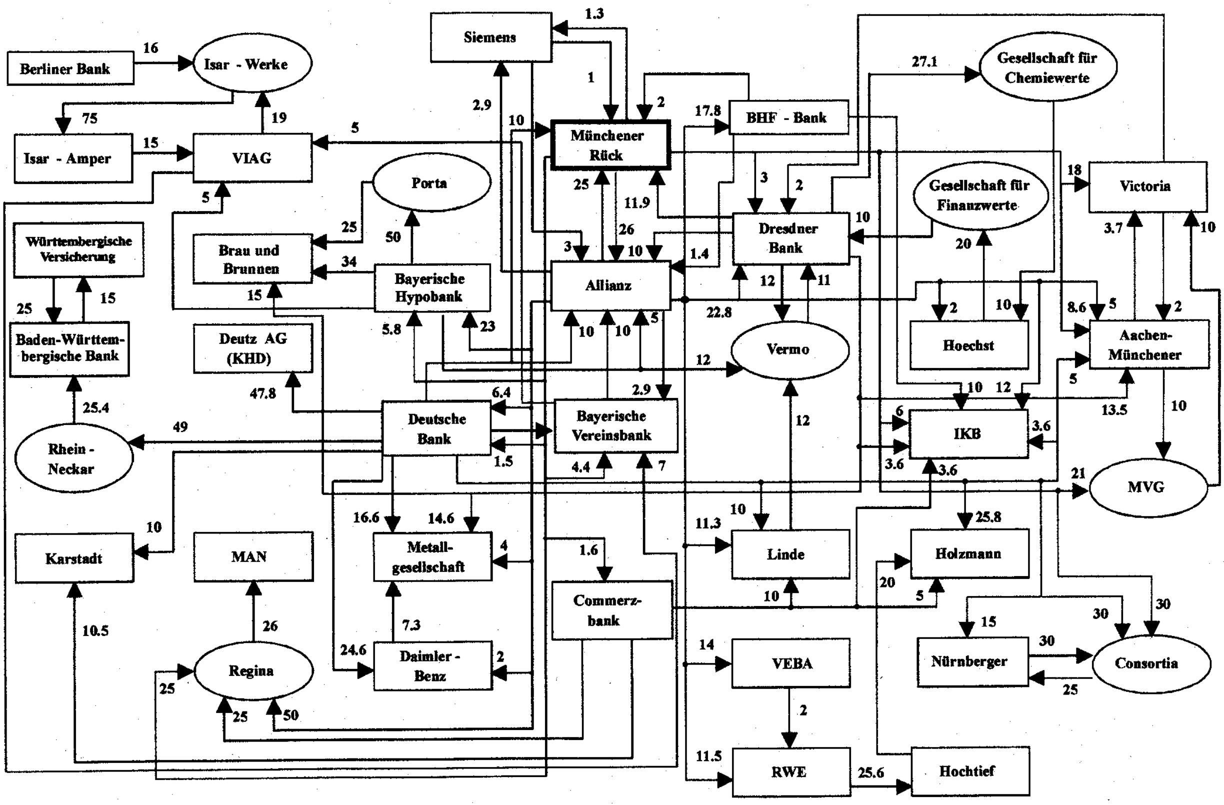
While the ownership stake of the banks is substantial, their dominating role is based less on direct share ownership than on a system of proxy voting (Depotstimmrecht) under which they cast votes for other shareholders. Under this system, private shareholders authorize the banks that hold their shares in custody to represent their interests at the annual general meetings of the companies. Baums and Fraune examined the bankers' importance in 24 out of the top 100 listed firms in Germany in 1992. At that time banks had 13% of the voting rights by virtue of their own shareholdings; 10% of voting rights by virtue of their own subsidiary investment funds;

and no less than 61% of voting rights by virtue of proxy votes (Baums and Fraune 1995: 103)[1]. If they controlled 84% of voting rights on the average in the 24 companies studied, the percentage was even higher in the case of some companies with household names; the banks controlled 95% or more of the voting rights in Siemens, Hoechst or Mannesmann and more than 90% in the case of BASF and Bayer. An interesting exception was Volkswagen, which, for historical reasons, is still partially state-owned so that banks only controlled 44% of the voting rights (Baums and Fraune 1995: 103).

The status of banks as dominant shareholders (mainly by proxy) explains why bank representatives can be found on most companies' supervisory boards. This way, banks and insurance companies – both in close cross-holding relationships – became the spiders in a dense network of cross-holdings and mutual supervisory board representation.

The resulting network of cross-holdings is shown in figure 1 which describes the situation at the beginning of the 1990s.

Figure 1: The German Network of Cross Holdings



Source: Adams (1999: 107)

1 Baums and Fraune examined voting rights of banks at annual shareholder meetings in 24 of the top 100 listed firms where ownership was dispersed amongst more than 50% of shareholders. In general, it is difficult to obtain empirical information about proxy voting because banks regard it as confidential (Dohmen 1998: 14).

This figure has often been reproduced as it brings to light the dominant roles of banks and insurance companies by showing part of the cross shareholdings of 16 of the DAX 30 companies. The direct cross shareholdings are immediately noticeable; as, for example, in the case of the insurance companies Münchner Rückversicherung owning 26% of the shares of Allianz and Allianz owning 25% of the shares of Münchner Rückversicherung[2]. The banks and insurance companies also have large indirect shareholdings through their independent holding companies. These holding companies often bring together several banks and companies and are marked in the figure by an oval circle around the name. Indirect shareholdings play an especially important role in Germany: via holding companies, a company such as the energy conglomerate VIAG even has indirect shareholdings in itself.

While financial companies play a central role as "spiders in the net" of cross-shareholdings the relative majority of shares are held by non-financial companies (31% as compared to 13% held by banks in 2000).

The system of cross-holdings leads to a system of interlocking directorates as a company with a significant ownership stake in another company usually has a representative on the supervisory board of that company.

Problems associated with the system of cross holding include the extremely close relationships and interdependencies between board members of different companies in Germany. It has been noted, for example:

> "The members of the supervisory board have to control company management and to prevent the misuse of power. At the same time, they are part of an encompassing network which functions as a means of social integration and cohesion among the business elites and to which they owe the position they have." (Windolf and Beyer 1995: 25, our translation).

In this system, the position of the banks is traditionally strengthened by their role in business financing. Traditionally, the banks were the most important source of outside finance. As in other advanced capitalist countries, the most important source of finance for German non-financial corporations was retained earnings and internal funds.

In the 90s, however, major restructuring occurred, to some extent strongly determined by erratic events. Though it is still too early to identify clear trends, this restructuring seems to be evidence for the influence of a changed role for capital markets and a shift in orientation towards shareholder value.

---

2 In corporate interlock, there has been a strong shift in recent years towards greater transparency. The two insurance companies Allianz and Münchner Rückversicherung, in particular, have drawn boundaries between their respective spheres of influence. Direct cross-shareholdings have been reduced, and spheres of control more clearly demarcated with regard to share investments. Allianz thus acquired a majority stake in Dresdner Bank but parted with shares in Bayerische HypoVereinsbank, the entity resulting from the merger between Bayerische Vereinsbank and Bayerische Hypobank, which now falls within the ambit of Münchner Rückversicherung.

The internal financing of non-financial German companies (i.e., of joint stock and limited liability companies) declined from almost 70% in the mid-90s to just under 36% in 2000, when it reached the lowest level since early 1991. The Deutsche Bundesbank sees the cause in lower retained earnings. Dissaving has reached dimensions comparable to the first half of the 90s when the unfavorable development of the economy ate into profits. "However," according to the Bundesbank analysis, "the earnings position for 2000 is much more favorable, so that a distribution behavior oriented on shareholder value notions could prove to be a driving force."[3]

Table 3: Financing of non-financial German companies from 1993-2000

%	1993	1994	1995	1996	1997	1998	1999	2000
Total (DM billion)	463.3	483.8	491.5	528.9	498.2	690.8	780.5	935.4
Internal financing rate	59.1	60.6	72.4	68.6	71.6	54.7	44.2	36.2
External financing rate	48.2	42.6	32.7	32.8	31.0	46.4	49.4	64.6
Of external financing:								
Banks	32.1	16.3	55.7	57.5	55.3	40.7	32.1	13.5
- short-term	-9.2	0.5	23.2	15.2	9.4	12.1	5.5	3.5
- long-term	41.4	15.8	32.4	42.3	45.9	28.6	26.6	10.0
Other investors	10.6	16.3	19.6	14.8	22.7	21.9	44.3	45.1
On the stock market	41.1	43.9	-4.0	-5.0	-3.8	-2.3	0.8	2.8
In the form of shareholding	12.4	18.3	20.1	28.6	21.2	36.9	20.6	37.2
Formation of pension reserves	3.7	5.1	8.7	4.0	4.5	2.7	2.3	1.5

Source: Deutsche Bundesbank 2001a: Monatsbericht June 2001, Die gesamtwirtschaftlichen Finanzierungsströme im Jahr 2000, 15-40, here p. 25, and own calculations[4]

Since the mid-90s, classical loan financing via banks has also declined strongly in importance (table 3). Whereas in 1996 58% of external funding needs were met by bank loans, in 2000 the figure was only just under 14%. In contrast, loan financing by non-banks, i.e., by "other investors," has increased strongly. These trade and financial loans, which constituted 15% of outside funding in 1996, provided 45% of external resources in 2000. Another source of finance was equity participation, constituting 20% in 1995 and 37% in 2000. However, this figure has been particularly strongly affected by special factors, and this has to do with the Mannesmann case. Shares acquired in the course of the Vodafone takeover were transferred to a newly established German subsidiary, which strongly distorted the statistics on direct share

3 Deutsche Bundesbank 2001a: 23

4 According to information from the Deutsche Bundesbank, there is no analysis of the capital structure of companies categorized in terms of whether they are listed on the German Stock Exchange or not. The research department at the Bundesbank is currently working on a separate reporting system for financing in terms of corporate legal form. At present no independently reported data are available.

acquisition by non-financial companies. According to the Deutsche Bundesbank, the provision of equity finance in 2000 was at about the long-term average.

Existing data on joint stock companies accordingly show little evidence of an increased role of stocks in company financing. The percentage of seasoned share issues in total market capitalization has fluctuated between 1% and 3% over the past 20 years and reveals no particular trend. The figure for 2000 was 1.37%.[5]

The shifts of the 90s were accompanied by a drastic switch in the weighting of domestic and foreign investors in external financing (see table 4) This did not concern classical bank loans, where other countries played only a marginal role in the 90s, as well, but especially "other investors". Although the share of foreign equity investments also rose drastically in 2000, foreign equity financing in 2000 represented 32% of total external funding in 2000. However, this figure is strongly exaggerated by the major transaction in the telecommunications industry mentioned. The changed role of foreign capital markets is strikingly clear when other investors are considered, whose weight in total foreign financing has more than tripled since

Table 4: External financing by non-financial companies (domestic/foreign)

External financing by non-financial corporations (domestic/foreign)								
%	1993	1994	1995	1996	1997	1998	1999	2000
External financing (DM billion)	223.2	206.0	160.6	173.3	154.3	320.5	385.4	604.4
of which:								
banks	32.1	16.3	55.6	57.6	55.3	40.7	32.1	13.5
- domestic	32.5	17.9	52.8	56.5	51.3	39.2	22.8	15.1
- foreign	-0.4	-1.7	2.8	1.1	4.0	1.5	9.3	-1.6
other investors	10.6	16.3	19.6	14.8	22.7	21.9	44.3	45.1
- domestic	6.8	6.4	5.9	-3.5	1.9	5.5	11.6	1.0
- foreign	3.8	9.9	13.8	18.2	20.7	16.4	32.8	44.1
equity investment	12.4	18.3	20.1	28.6	21.2	36.9	20.6	37.2
- domestic	13.8	16.2	17.1	29.5	16.1	35.2	10.2	5.2
- foreign	-1.5	2.2	3.1	-0.9	5.1	1.7	10.4	32.0
other	44.8	49.1	4.7	-0.9	0.8	0.5	3.0	4.3

Source: Deutsche Bundesbank 2001a: Monatsbericht June 2001, Die gesamtwirtschaftlichen Finanzierungsströme im Jahr 2000, 15-40, here p. 25 and own calculations

5 Deutsches Aktieninstitut 2001, Tab. 03-2

6 According to information from the Deutsche Bundesbank, there is no analysis of the capital structure of companies categorized in terms of whether they are listed on the German Stock Exchange or not.

1995, from 14% to 44% in 2000.[7] Other investors are often foreign subsidiaries who are under instructions from the group to raise trade and financial loans on the capital market for the group. These firms usually have their registered offices in the Netherlands for tax reasons.[8]

Overall impressions of balance sheet structures, however, can mask significant differences according to firm size and, in Germany, the ratio of own funds to total liabilities is far higher for large firms than for small firms. A Deutsche Bundesbank study of the annual accounts of West German manufacturing corporations[10] found that, between 1987 and 1995, German companies in general financed themselves in about equal proportions from creditors, provisions and own funds. In the period under study, the overall capital structure of German companies changed very little. When differentiated by firm size, however, clear differences emerged. Towards the mid-90s, own funds represented about 30% of the total liabilities of larger companies (500 and more employees) while smaller companies (less than 500 employees) only had an equity capital base of 9 to 20% of total capital.[11]

The smaller companies actually reduced their equity capitalization from mid-80s to mid-90s for reasons linked to the corporation tax system. In Germany, retained earnings incur a corporate tax rate that is between 14% and 20% higher than taxes on dividends. The bank debt ratio decreases with company size: the smaller the company, the higher the bank debts. The outstanding importance of the banks in financing small and medium sized companies in Germany can also be explained by the nature of the bankruptcy law, as creditors are given a relatively favorable position in insolvency proceedings.

There has been an ongoing debate about the merits and demerits of the historically prominent role of banks in the German corporate governance system. The potential benefits were emphasized in a recent OECD report:

> "Through their continued presence at shareholders' meetings, banks provide an independent outside monitor of corporate decision-making. Outside monitoring is widely regarded as one of the building blocks of an efficient system of corporate governance because such monitoring serves to alleviate the so-called 'free-rider problem' which arises whenever many small shareholders have to form a common standpoint vis-à-vis the top management." (OECD 1995: 96)

In a recent essay, Wenger and Kaserer opposed this view:

---

7 The strong increase, especially in long-term lendings, according to the Deutsche Bundesbank, is to be seen in the context of acquisition of UMTS licenses by domestic telecommunication companies.

8 Deutsche Bundesbank 2001a: 24

9 Deutsches Aktieninstitut 2001, Tab. 03-2

10 "On Corporate Financing in Germany and France: A Comparative Analysis", Deutsche Bundesbank 1999c. The 9,000 companies in the study of Germany accounted for only about 15% of the incorporated enterprises but represented 70% of total turnover (p.30). The study of liabilities and asset structures was based on annual accounts data of two-year sliding, overlapping cylindered corporate samples.

11 See also Deutsches Aktieninstitut 2001, Tab. 04-3.

> "In reality, large German banks are sheltered from outside pressures by a dense network of cross-holdings, proxy votes, and underdeveloped disclosure obligations. Therefore, bank managers are not forced to pursue a value-maximizing investment and monitoring policy." (Wenger and Kaserer 1998: 531)

In summary, banks played a critical role in the German system of corporate governance for two reasons: firstly, because of their direct ownership of shares and the system of proxy votes; and, secondly, because industrial companies, when they resort to outside finance, still do so by appealing to banks for long- and short-term credits.

1.2 Co-determination

The dominant role of banks is not the only characteristic, however, to influence the conduct and performance of German companies. The system of co-determination also contributes to the unique nature of the German system of corporate governance. This dual system consists of representation of union interests and representation of employer interests.

German corporate law provides a dual board structure where the managing board and the supervisory board are separate entities. Various laws determine the proportion of employee and employer representation on the supervisory board and define the rights and duties of the managing board, the supervisory board and the shareholders' meeting (Markovits 1982; Streeck 1995; Leminsky 1998). More broadly, the co-determination system means that elected workers' representatives have more far-reaching information, consultation, and veto rights on certain issues than those in a country like Britain where there is only one board of directors representing the shareholders' interests. These employee rights are legally institutionalized on several levels:

1. On the basis of the Works Constitution Act (BetrVG 1952, 1972) it provides workers representation a) on shop-floor level and b) in the supervisory board.
   a) At the level of individual plants, in companies with five or more employees, the employees have the right to elect a works council. It is a facultative provision. The number of works council members is proportionate to the number of employees. The Works Constitution Act (Betriebsverfassungsgesetz BetrVG) also provides for works council members to be released from work according to a certain number of employees to be represented: This means one fulltime councilor for every 300 employees. The yearly costs for one fulltime councilor are about 1,000 DM per employee (Tagesspiegel, 13 February 2001, p. 18). The employer bears the costs, as with everything that has to do with the activities of the works council. In 1987, the average cost per employee was 440 DM (Dilger 1999).
   The council's purview covers three areas, namely co-operation in social, personnel, and economic matters. Social matters in which it has full co-determination rights include fixing rest periods, leave, shift plans, and the like, as well as company pay structures and piece and bonus rates.

Personnel matters include employment, classification, reclassification, where in each case the works council has to be informed in advance and asked for its approval. It may deny its approval only under specified conditions. Certain measures such as dismissals due to redundancies and changes of the wage system can be vetoed by the works council due to its right for co-determination on these matters.

In relation to what are defined as strictly 'economic' matters, such as the introduction of new working and production methods, rationalization measures, and the restriction, closure, and merging of enterprises, the works council has, with few exceptions, only the right to be informed.

b) In companies with more than 500 employees (whatever their legal status), the representation of workers on supervisory boards is mandated by the Works Constitution Act of 1952. Under this Act, one third of the supervisory board members are employee representatives.

2. In companies with more than 2,000 employees, the Co-Determination Act (MitbestG) of 1976 goes further and stipulates that 'labor' should take half the seats on the board. The representatives of capital retain the right to nominate the chairman of the supervisory board who has the casting vote when the two sides are deadlocked.

3. The Co-Determination in the Coal, Iron and Steel Industry Act (Montan-MitbestG 1951) provides an even more extensive form of co-determination for the coal and steel industry. It accords equal representation to labor and capital on the supervisory board with a neutral eleventh respectively fifteenth or seventeenth member. The number of companies subject to this specific form of co-determination has fallen to 31 by the end of the 1980s, though.

At the corporate level, general works councils can also be established.

Even though the representation of labor on company boards is an essential element of Germany's industrial relations system, it was highly controversial in its formative years in the 1950s and, for a short period, in the 1970s when the system was revised by new legislation. Since then it has become a widely accepted element of the German system.

However the debate has flamed up recently in the context of the planned reform of the Works Constitution Act this spring because it is considered to be union-biased. The critique coming from the employers focuses on the expansion of co-determination and (thereby) the increase of union influence on individual plant matters. The most controversial issues are

– new regulations as to the vote of works councils in small companies up to 50 employees which are intended to make it easier to establish a works council although the employer is against it. It is considered to be a means to strengthen union influence because of the possibility of ad-hoc nominations at workers assemblies;

- the lowering of the proportion rate between works council members released from work and the number of employees represented by it from 300 to 200 employees. This would increase the costs for work council representation significantly;
- the expansion of co-determination on matters that have so far not been subject to it like for instance further education and employment protection.

However, as the recent debate about the recent amendment of the Works Constitution Act shows there is strong resistance on the employer's side to expand the role of the works councils and of co-determination.[12] Also, in the recent debate about the need for a German corporate governance code critique of the system of co-determination is being voiced by some of the protagonists.

Experts take very different positions on the merits and demerits of the system of co-determination. In its evaluation of the German system of corporate governance, the OECD pays a half-hearted tribute to co-determination:

> "There is little doubt that compared to the Anglo-American 'model' of corporate governance, German employees have more influence on decision-making in firms. However, influence flows in both directions, with employee views and attitudes being affected by their board representation and thereby potentially helping to foster the more consensual relationship." (OECD 1995: 98)

But this endorsement is challenged by other, more critical views of this peculiar German institution. In a much-cited article, Jensen and Meckling (1979) long ago questioned the rationale of co-determination from a shareholder-value point of view:

> "If co-determination is beneficial to both stockholders and labor, why do we need laws which force firms to engage in it? Surely, they would do so voluntarily. The fact that stockholders must be forced by law to accept co-determination is the best evidence we have that they are adversely affected by it." (Jensen and Meckling 1979: 474)

Some empirical studies on the effect of co-determination on company performance claim to find evidence of a negative impact. FitzRoy and Kraft (1993) investigated the effect of the Co-Determination Act of 1976 and came to the conclusion that the return on equity of the company sample affected by the law decreased by about 5% compared to a sample of companies not affected by the law. Schmid and Seger (1998), who studied the development of companies under the Co-Determination Act concluded that the market value of these firms' equities until 1991 could have been up to 24% higher if half-parity co-determination had not been introduced. According to another study by Baums and Frick (1996), the enactment of the Co-Determination Act had no adverse effects on the share prices of the companies falling under the law.

It appears that the existence of a works council has a significant effect on the adjustment of employment levels (Gold 1999:109). Firstly, the number of dismissals is reduced, and, secondly, adjustment costs accrue through institutional arrangements

12 The amendment came into force on.

in the form of periods of notice and dismissal protection provisions as well as rights of participation, which delay or prevent the flexible adjustment of employment levels (ibid: 108).

As to the impact of works councils on company performance earlier research by Addison, Kraft and Wagner (1993) and Addison, Schnabel and Wagner (1996) came to contradictory conclusions: The 1993 study concluded that co-determination has no statistically significant influence on net earnings; while the 1996 study found a statistically significant negative influence on profitability. More recent research has produced more consistent results. According to Jirjahn (1997) and Jirjahn and Klodt (1999), the existence of a works council has a positive influence on productivity[13] and a negative influence on profitability. This finding could be explained by the influence of works councils on the distribution of profits. Other studies have found that works councils have a significant positive influence on wage levels (see Dilger 1999) – but only in companies not bound to area-wide collective bargaining agreements. As to innovation Addison/Schnabel/Wagner (1996) found a positive correlation between the existence of a works council and product innovation, but a negative one as to process innovation.

More differentiated findings yields the study of Gerum's (1991). This study is significant because it takes the politics of the supervisory board into account and develops both a taxonomy and an argument about the possibility of different outcomes. Gerum analyzed the influence of the supervisory board on company policy in 71 publicly traded companies selected in 1979. He differentiated between (a) supervisory boards dominated by shareholders or by other stakeholders and (b) supervisory boards seeking to influence business policy[14] and those confining themselves to their formal, legally stipulated role. On this basis, he distinguished four types of supervisory board – management board relations:

1. In the 'dominating supervisory board' the representatives of capital have the majority of seats on the board and determine the chairman. By defining a detailed list of decisions requiring their approval, the supervisory board exerts complete control over the management board.
2. In the 'controlling supervisory board' shareholders dominate the board, which refrains from defining decisions requiring approval. Thus, the supervisory board only controls management board decisions ex post.
3. In the 'company policy oriented supervisory board' shareholders do not dominate the supervisory board; at the same time the board defines decisions requiring approval and by this means actively influences company policy.

13 According to a recent study by Addison/Siebert/Wagner/Wei (2000) this finding however only applies to firms with more than 100 employees, not to smaller companies where the existence of works councils is disadvantageous. The authors therefore conclude "that the differentiation provided by the law is insufficient" (ibid: 40).

14 According to German law on stock corporations, supervisory boards can define and specify a list of decisions requiring assent (§ 111 Abs. 4 AktG). By this means, the supervisory board can influence strategic decisions in functional areas such as finance, personnel, investment, etc.

4. In the ‘consultative supervisory board’ the supervisory board is again dominated by labor and decisions requiring assent have not been defined. In this case, the board confines itself to an advisory and supportive role vis-à-vis the management board.

Gerum identified two thirds of the companies he investigated as type three or four, that is, not dominated by shareholders. The largest single group, some 37% of the sample, were type 3 policy oriented companies in which labor representatives actively influenced company policy. Overall, only 13% of the companies were type one; or, only in one out of ten companies did shareholders exert control over company policy via the management board. More often, according to Gerum, management boards used supervisory boards merely as an instrument to legitimate their policies (Gerum 1998: 56). Gerum concludes that the balance of power in companies subject to the 1976 Co-Determination Act clearly tilts in favor of company management; and for this reason:

> “Co-determination has to be seen as an additional means of control besides the capital and product markets. In addition to its consultative function, co-determination by employees remains the only structurally secured form of (internal) outside control.” (Gerum 1991: 729; our translation)[15]

If one considers the impact of workers’ representation on the basis of the Industrial Constitution Act it appears that the existence of a works council has a significant effect on the adjustment of employment levels (Gold 1999: 109). Firstly, the number of dismissals is reduced, and, secondly, adjustment costs accrue through institutional arrangements in the form of periods of notice and dismissal protection provisions as well as rights of participation, which delay or prevent the flexible adjustment of employment levels (ibid: 108).

Altogether, empirical research has not generated consistent and convincing evidence about the impact of co-determination on performance and innovation (Sadowski 1997: 9). Much the same is true for research on the effects of the Co-Determination Act concerning labor representation on company boards as well as on the effects of the works council system. One of the underlying problems is that most quantitatively oriented studies on the impact of the 1976 Co-Determination Act are methodologically flawed:

– One general problem is the absence of an appropriate control group of companies that would allow researchers to isolate the impact of co-determination. The studies cited above have distinguished neither between the situation before and after the introduction of co-determination in 1976 nor between companies that fall under the Co-Determination Act and those who do not because they had

15 Therefore ‘stylized’ interpretations about the general and invariant merits of the co-determination system can be quite misleading. This judgment applies to the OECD’s misleading interpretation and verdict: “a stylized version of the German model is that it relies on continuous monitoring of managers by other stakeholders, who have a long-term relationship with the firm and engage permanently in important aspects of decision-making and, in case of dissatisfaction, take action to correct management decisions through internal channels” (OECD 1995: 85).

fewer than 2,000 employees. Both approaches are problematic: due to the oil price shocks in the mid-1970s, the situation after 1976 was different for all companies. Furthermore, the distinction between larger and smaller firms compares two classes of company that are dissimilar, but not unrelated, because smaller companies supply larger ones.

– These quantitative studies conceptualize the supervisory board as a 'black box' and accordingly do not analyze the composition of the supervisory board and the strategies of the members on the 'capital bench' (Sadowski 1997: 72).

Overall, the empirical evidence does not appear to support Jensen/Meckling's (1979) supposition that legal co-determination has had a principally negative effect on shareholder wealth. The existence of co-determination per se has no definite implications for shareholders, mainly because the system can be implemented and operated in so many different ways.

A former personnel director of Henkel has claimed, for example, that: "The Works Constitution Act would have had to be invented if it hadn't existed" *(Tagesspiegel,* 18 Oct. 2000: 20). According to trade union lawyer Michael Kittner, this reflects recognition by management in large companies "that many of the disputes that arise in the firm can be settled with less friction if the elected representatives of the employees participate in their solution" (quoted in *Tagesspiegel,* op. cit.).

For a full analysis of the effects on the allocation of resources and returns of the system of co-determination and works council representation it is necessary to include the system of collective bargaining and the interdependencies between both systems. This will not be explored further at this point. An outline of related issues is given in the appendix.

1.3 The Production-oriented, Company-centered Management System

Another element often considered to be peculiar to Germany is a production-oriented, company-centered management approach. This characteristic of German management was much emphasized in the literature that addressed the contrast between German manufacturing success and British industrial decline through the 1970s and 1980s. Lawrence (1980) provided a classic epitome of managers in West Germany:

> "The somewhat 'de-economized' view which German managers have of the business enterprise is central. The idea that a firm is not a 'money-making machine' but a place where products get designed, made and eventually sold, with profits ensuing, tends in Germany to restrict the allure of accountants and financial controllers and to dignify the makers and those associated with them." (Lawrence 1980: 131)

'Technik'[16] has a central place in his account of German management: because, according to Lawrence:

> *"Technik exerts* a pervasive influence on *German* firms and on German managerial thinking. (...) The German company is *Technik* in organizational form. The skilled worker, the foreman, the superintendent, the technical director are all participants in *Technik*. Of course, there are many things which they do not have in common, but *Technik* is something which transcends hierarchy. It may also transcend particular functions in the company." (Lawrence 1980: 98)

One manifestation of the centrality of *Technik* is the high status of engineers in German companies. As Millar in her Anglo-German comparative study observed, this contrasts with the high status of finance and marketing people in the UK (Millar 1979: 63). In another Anglo-German comparison, Eberwein and Tholen (1993) concluded that engineers:

> "… are represented more in German industrial management, also at the top of the company, in numerical terms much more than in England, and indeed not only in technical but also in non-technical functions." (Eberwein/Tholen 1993: 173)

In comparing Britain and Germany and explaining British industrial decline, the German *'Technik'* orientation and the status of engineers has tended to be somewhat idealized. Furthermore, as Porter observed, the grip of *'Technik'* on German management relaxed by the end of the 1980s as financially trained executives took the helm in more companies (Porter 1990: 717). Nevertheless, the culture and objectives of German management were and are different, so that even the most recent surveys disclose significant differences in management priorities.

Table 5: Management board priorities in British and German companies (1998)

Percentage of management boards ranking these in the top three items of importance:	*UK (sole board system)*	*Germany (dual board system)*
Meeting financial goals	72	53
Acquisitions, mergers, joint ventures & divestments	46	28
Reducing costs	15	36
Improving productivity	15	36

Source: Korn/Ferry International (1998): European Boards of Directors Study, selected data from Fig 21a: 35

Table 5 presents recent survey results about the relative importance of financial and productionist objectives for British and German management boards. Differences in orientation have obviously persisted if the British respondents attach so much more

16 The German term "Technik" which Lawrence uses, has no real equivalent in English though it has recently entered British consciousness as a result of VAG advertising campaigns for the Audi brand.

importance to meeting financial objectives and managing merger, acquisition and divestment.

In summary, section 1 has outlined the central pillars of the German system of corporate governance: the system of cross shareholdings and the role of the banks, codetermination and the production-oriented, company-centered management system. The structural stability that these pillars have instilled in the German system of corporate governance is nonetheless coming under pressure. In the following sections, we will examine the significant changes that have been occurring in the German legal system, in financial markets and in relation to labor.

2. Regulatory Changes of Financial Markets and Corporate Governance

In general, Government measures in the area of financial regulation and company law have been incremental and mostly marginal: there has been no 'big bang' liberalization of the financial markets in Germany.

2.1 Laws on the Promotion of Financial Markets

In the area of financial regulation, the second and third law on promotion of financial markets, together with other measures, went some way towards creating a more American style regulatory agency. As a result the changes facilitated the development of a wider range of investment funds and consequently fostered both the demand and supply for venture capital.[17]

The second Financial Markets Promotion Act *(Zweites Finanzmarktförderungsgesetz)* was introduced in 1995 and set up the Federal Supervisory Office for Securities Trading[18], a German equivalent to the US Securities and Exchange Commission.

The third Act *(Drittes Finanzmarktförderungsgesetz)* of 1998 created a more liberal framework so that German financial markets could respond to competitive pressures. The operations of German venture capital were facilitated by changes in the regulations governing investment companies that allowed them to operate under a more flexible regime. The most important changes include that capital gains are tax-free after one year (not six years), majority holdings in companies can be retained for up to eight years (not two years), investment companies are no longer obliged to go public within ten years and, rules about the minimum number of shareholders have been eased. The operations of financial intermediaries were facilitated by changes in the rules on liability; investment companies and financial advisors are now liable for prospectus information and for financial advice only for three years (instead of 30 years as previously) (OECD 1998: 188). In a parallel development, German financial regulations were also reformed in an attempt to deal with a perceived problem about the funding of pensions. Thus regulations were changed to allow the creation of private pension funds.

More broadly, several of the new financial measures represent compromises between interest groups and lobbies with different agendas and the end result includes both compromise and significant unintended changes. Thus, pressure for reforms in company law originally came from the Social Democratic Party (SPD) in 1995,

---

17 Demand and supply for venture capital was further promoted by the creation of the 'Neuer Markt'.

18 Bundesaufsichtsamt für den Wertpapierhandel; BAWe: http://www.bawe.de

which aimed to reduce the power of the banks after a number of scandals about corporate control in metal working companies. Due to resistance by companies and banks, the 1998 law (Control and Transparency Act – KonTraG[19]) did not greatly change the responsibilities of supervisory boards or encourage greater transparency. Under the new legislation, supervisory boards must meet at least four times a year (previously two) and voting rights were put on an equal basis as shares with multiple voting rights were abolished. It also made major pro-shareholder value changes in the framework of rules about how firms could use their own equity. Before 1998, conservative and traditional rules designed to discourage fraud and share price manipulation had, in Germany (as in other countries like the Netherlands), prevented companies from dealing in their own shares. The changes introduced by the 1998 Act can properly be seen as a significant change because stock options may now be used as compensation for directors and firms are permitted to buy back their shares.

The fourth Financial Markets Promotion Act is likely to be passed in summer 2002. The Act aims to enhance investor protection. The Federal Securities Supervisory Office has been entrusted with monitoring insider dealing and market rigging. Share dealings by managers will be more strongly regulated in future; so-called "director's dealings" will have to be disclosed if they exceed a given minimum limit. The bill also seeks to regulate the conduct of financial analysts. In future, analysts will be required to disclose any economic interests in the securities analyzed. An investor will also be able to take legal action against a company (but not against the responsible management) on grounds of incorrect statutory statements, although the onus of proof is on the investor. Even if the bill does not satisfy all the demands of consumer associations and investor protectors (e.g., with regard to the rules on ad-hoc publicity and reversal of the burden of proof in the case of claims for damages), it is nevertheless a further step towards strengthening the shareholder position vis-à-vis company management.

2.2 Takeover Code

In view of the wave of mergers and acquisitions and Germany's first spectacular case of a hostile takeover (the aforementioned Vodafone acquisition of Mannesmann), the issue of regulating takeovers has recently been receiving much attention. There is currently no obligatory regulation on takeover conditions. The European commission has, for quite a while, been trying to harmonize the regulation of takeovers but as yet no agreement has been reached on the legislation process in the European commission. As a consequence, the takeovers in Germany are governed by a voluntary code created in 1995 by an expert commission of the German stock exchange. It developed suggested codes of practice for company takeovers that will ensure that takeover offers include the information necessary for shareholders to

19 Gesetz zur Kontrolle und Transparenz im Unternehmensbereich (KonTraG). Appendix 2 is a detailed outline of KonTraG.

take a careful decision and thus prevent the market from being manipulated. A takeover commission is nominated by the expert commission of the German stock exchange to ensure that bidders stick to the codes of practice.

Before a public offer is made, the company wishing to make the offer must inform the target company, the German stock exchange and the takeover commission about the contents. Subsequently, the offer should be published in at least one supra-regional newspaper. An adequate period of time of at least 28 days should be conceded to the stockholders so that they can check the offer and make a decision. An important element of the voluntary code is that the managers of the target company are not allowed to undertake efforts in order to prevent the takeover attempt. This rule is justified on the basis of shareholders' interests, who might otherwise be deprived of possible profits ensuing from the takeover. The principle of equal treatment implies that minority shareholders should be especially protected. After a new company has taken over control of a quoted company, the shareholders should be given the opportunity to sell at a fair price. Up until the end of 1997, the threshold of voting rights of the target company was 50 percent. If the acquiring company reached this level, the shareholders were to be given a compulsory offer. Since the first of January 1998, a qualitative threshold has been introduced instead of a fixed value. "Control" is now defined as the level of shareholding that provides a three quarters majority in the target company. The average presence at the three previous shareholders' general meetings counts as a base, so that a shareholding of 32 percent can suffice for control to have effectively changed hands, thus requiring that the acquiring firm makes a compulsory offer to shareholders of the firm being acquired.

The above code of practice has become more widely accepted since the German stock exchange in 1998 declared compliance to be required for admittance to the two indices DAX and MDAX. In addition, companies accepting the code of practice are specifically identified in all publications of the stock exchange.

Since the Mannesmann case, takeover regulation has become an increasingly controversial issue. This became clear when the German government, which had supported the broad lines of the European Commission draft Thirteenth Directive on Company Law Concerning Takeover Bids put forward in 1996, suddenly changed course in late 2000 and announced its opposition to the draft. The principal objection concerned the principle of board "neutrality" with regard to defensive measures after a takeover bid for the company has been launched. The Directive was voted down in the European Parliament, thanks to intensive lobbying, especially by German firms and the trade unions. Indirectly, the main concern was to save the protective arrangements for Volkswagen provided by the 1960 Volkswagen Act. Under this legislation, Lower Saxony retains 20% of the voting rights in the carmaker. Other shareholders cannot accumulate more. After the EU Directive had been rejected in December 2001, the German government passed a law granting managers the right to fend off a hostile approach without consulting shareholders. The European Commission has since insisted that regulation of takeover bids is a key element in achieving an integrated capital market in the Union by 2005. Thus takeover bids will remain a controversial issue for some time to come (cf. also European Commission 2002).

2.3 Tax Reform on Sales of Share Packages

On 1 January 2001, a series of German Tax Reforms were introduced that are widely seen as a signal of a new policy orientation aiming at an unraveling of the system of cross-shareholdings. Hitherto, high taxes were charged on the sales of share packages. In the future, capital gains from the sale of shareholdings between corporations will generally be exempted from tax. The new rules will enter into effect as from the 2002 tax year. From 2001, corporate tax will be cut to a uniform 25 per cent. To make cross-border investment within Europe more attractive from 2002 onwards the 'full imputation system' will be replaced by what is called a 'half-income system'. Also under the new rules, only half of the distributed profits of a corporation will be included in the shareholder's personal income tax base.

2.4 Initiatives toward the German Code of Corporate Governance

On the background of demands of institutional investors and a widespread critique of the traditional German system of corporate governance several private initiatives were taken to develop best practice principles aiming at a German corporate governance code. Commissions were set up with prominent personalities from industry and finance and academics competing to develop new standards.

Thus, the "Commission on General Principles of Corporate Governance" (http://www.corgov.de) primarily emphasizes legal aspects. Its recommendations focus on the rights and duties of the various corporate governance institutions: supervisory board, executive board, general assembly and the rights of individual shareholders. The recommendations are oriented at the principles of corporate governance developed by OECD. The German association of finance analysts and asset management (DVFA) (http://www.dvfa.de) on the basis of these recommendations has developed a Corporate Governance-Score Card as an instrument for analysts in evaluating corporate governance practices of listed companies.

The "Berlin Initiative for a German Code of Corporate Governance" (http://www.gccg.de) takes a broader view on corporate governance as the legal and factual rules for managing and controlling a company. Criticizing a perceived bias towards a supervisory perspective by other initiatives the importance of corporate management, selection procedures for top management etc. are emphasized.

In addition to these private initiatives, an official government commission on corporate governance has been set up. In February 2001 it put forward a proposal for a German Corporate Governance Code covering four areas: shareholder value, dual corporate constitution, transparent corporate management, and independence for auditors and supervisory boards. First reactions see the draft as a compromise between the hardliners of Rhenish capitalism and Anglo-Saxon oriented reformers. Representatives of industry are among the “hardliners” (names mentioned include the BASF deputy chairman Kley and the head of Porsche Wiedeking), while the other side includes figures from the financial world and shareholder representatives (such as Breuer, chairman of Deutsche Bank, Strenger, member of the DWS supervisory board, etc., and Achleitner, Allianz finance director)[20]. That the proposals are a compromise is clear from the fact that they follow the German Takeover Act in giving the executive and supervisory boards far-reaching defensive means against hostile takeovers, while providing for the individualized disclosure of management salaries.[21]

It is already apparent that not all German companies will accept the rules. Deutsche Bank, for example, has adopted its own corporate governance principles. The chairman of the Deutsche Bank executive board has been the most outspoken critic of the proposed corporate governance code, which he considers a “locational disadvantage” for German companies. One of his chief points of criticism is that the draft code does not address the collective principle with regard to the role of the executive board under German stock corporation law. This provides that all members of the board can conduct business only collectively. Breuer considers this principle as “no longer appropriate” because it presupposes that all board members have an interest in assuming responsibility for everything.[22]

2.5 Revisions of the Index Calculation by the German Stock Exchange

In August 2000 the executive board of the German stock exchange (Deutsche Börse AG) decided to revise the criteria for its official indices strengthening the weight of free float. Share packages of more than 5% of company stocks will count as block ownership from June 2002 onwards. In order to be taken up into the index a company has to have at least 20% free float then and at least 15% (in the case of the DAX index 20% as of September 2001) will be required to remain an index company.

As a consequence of this revision companies like the Deutsche Telekom AG which are held mostly by the state as block owner will have much less weight within the overall composition of the index. The current weight of Deutsche Telekom in the DAX lies at 12.7%, under the new system it would be reduced to circa 4.7%.

In view of the importance for companies to be members of the index club, this measure can be seen as an incentive for companies to reduce block ownership and increase their exposure to the stock market.

---

20 Financial Times Deutschland, 5 March 2002

21 Cf. H. Ehren and T. Enzweiler, “Cromme allein zu Haus”, in: Financial Times Deutschland, March 5, 2002.

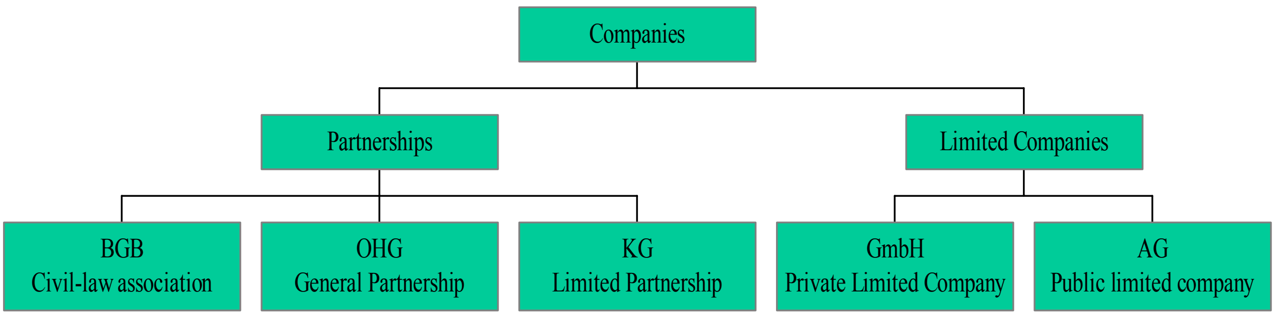
22 “Breuer fürchtet Standortnachteile”, in: Handelsblatt, 14 March 2002

3. The Structuring of Financial Markets and Their Impact on Corporate Governance

Developments in the financial markets have been *the* major driving factors for changes of the corporate governance system. Under the closed system of cross-shareholdings in Germany described earlier, with the banks playing a dominant role in company financing and in supervisory boards, shares have tended to play a relatively minor role as a means for company financing and private savings has been small. Over the last 5 years, however this situation has been changing rapidly. The following section begins with an outline of the major forms of company organization in Germany and goes on to explain the marginal role that the German stock markets have traditionally played in terms of registered companies and market capitalization and describes recent change dynamics in this area (3.1). Section 3.2 discusses recent developments in share ownership, on-going shifts in the structures of ownership and the influence that this is having on companies. In Section 3.3, the changes of the role of banks and the rise of institutional investors are described. Section 3.4 deals with the introduction and impact of the Neuer Markt and its implication for venture capital financing and start-up companies, asking the question as to whether or not it indicates a paradigm shift away from the traditional German risk-adversity?

As well as possibility of operating as a sole proprietor, there are five major forms of company organization in Germany as outlined in figure 2 below.

Figure 2: Major forms of company organization in Germany



Source: Hartmut Schmidt, Jochen Drukarczyk, Dirk Honold, Stefan Prigge, Andreas Schüler and Gönke Tetens, 1997, *Corporate Governance in Germany,* HWWA-Institut für Wirtschaftsforschung, Hamburg: 27.

3.1 Small Stock Market – Recent Dynamics

Stock markets have played a marginal role in Germany in almost all regards. As table 6 shows public limited companies are relatively rare in Germany compared to other legal forms.

Table 6: Companies and turnover by legal form*

Percentage of Companies [Percentage of Turnover]	*1990***	*1992*	*1994*	*1996*	*1997*	*1998*	*1999*
Number of Companies (1.000) [Turnover (million DM)]	2,104 [5,038]	2,632 [6,328]	2,787 [6,545]	2,763 [6,852]	2,798 [7,115]	2,860 [7,392]	2,886 [7,622]
Sole proprietorship (Einzelunternehmen)	73.4 [14.9]	73.2 [15.0]	72.4 [14.9]	71.3 [14.2]	71.2 [13.8]	71.1 [13.3]	70.6 [12.9]
General commercial partnership (OHG/GbR))	8.2 [6.8]	8.0 [6.4]	8.3 [6.1]	8.6 [6.3]	8.7 [6.1]	8.8 [6.1]	8.9 [6.3]
Limited commercial partnership (KG/GmbH & Co. KG)	4.1 [23.9]	3.3 [22.4]	3.2 [22.1]	3.3 [22.2]	3.3 [22.2]	3.4 [22.4]	3.5 [22.5]
Stock company (AG/KGaA)	0.08 [20.2]	0.08 [19.4]	0.08 [19.6]	0.09 [20.3]	0.10 [20.9]	0.11 [21.5]	0.14 [20.7]
Limited liability company (GmbH)	12.5 [29.1]	13.7 [31.3]	14.4 [32.3]	15.0 [32.3]	15.0 [32.2]	14.9 [32.0]	15.2 [32.6]
Other legal forms	1.7 [5.1]	1.7 [5.4]	1.7 [4.9]	1.7 [4.6]	1.7 [4.9]	1.7 [4.8]	1.7 [5.0]

* others: composed of trade and industrial cooperatives. business enterprises of corporations under public law and other legal forms

** Only former West Germany

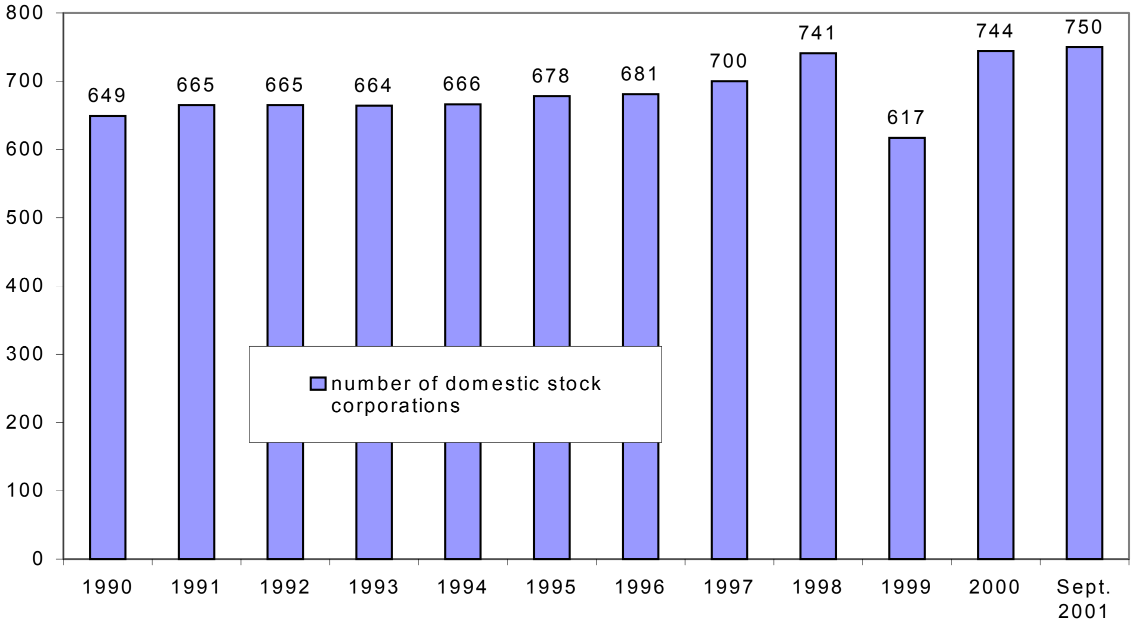
Source: Statistisches Bundesamt 2001: Finanzen und Steuern. Fachserie 14. Reihe 8. Umsatzsteuer 1990. 1992. 1994. 1996-1999 (1992. 1994. 1996. 1998-2001).

Relative importance of public limited companies

While stock companies (AG) are few in number, they have played an important economic role in Germany. In 1999 they generated 21% of the total turnover of German companies (see table 6). At the same time the sole proprietorships *(Einzelunternehmen)* accounted for only 13% of total turnover. The other important legal form in Germany is the limited liability company (*GmbH)*. The 438,085 limited liability companies generated 33% of total turnover in 1999.

Since 1997, there has been a notable increase in the number of listed private limited companies in Germany, as is shown in figure 3.

Figure 3: Historical trend of listed domestic stock corporations



Source: Deutsches Aktieninstitut (2001: 02-3)

Market capitalization

In terms of market capitalization, a few large companies still dominate the German stock exchange, constituting a small subset of all quoted companies. In 2000 the 5% largest companies (42 in number) accounted for 73.5% of total market capitalization. Concentration has decreased slightly in resent years. In 1998 the 5% largest companies (35 companies) still accounted for almost 805 of total market capitalization.[23] In 1998 the 5% largest companies (35 in number) accounted for some 77.8% of total market capitalization. This concentration appears to increase slightly over the years. This dominant group more or less coincides with the DAX 30 listing of the 30 largest German blue chip companies.

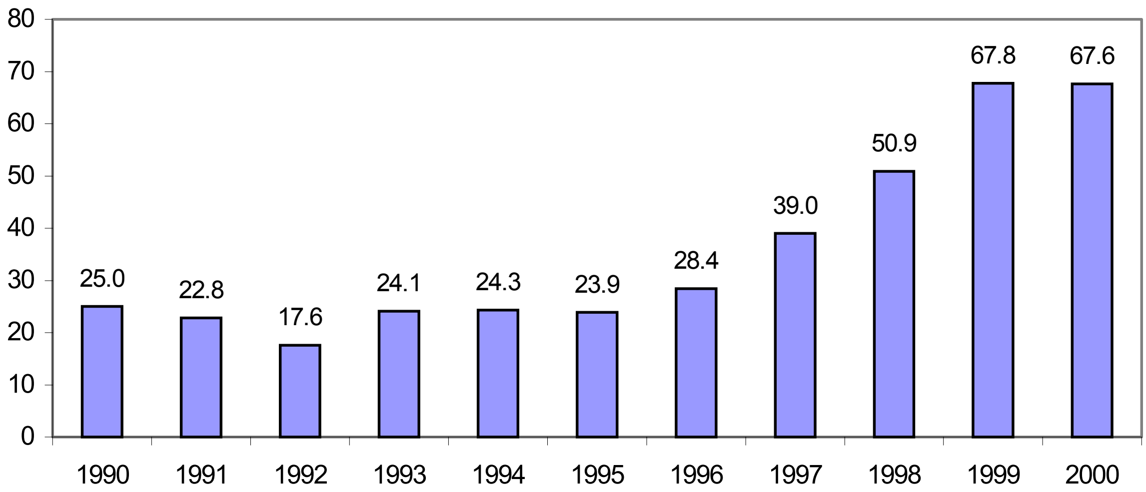
In 2000, only 750 German companies were publicly traded companies (see figure 3). In Germany, interestingly, the number of foreign listed stock corporations was about four times higher (2.784) than the number of German public traded companies (Deutsches Aktieninstitut 1999a; table 02-2-1, 02-2-2). This relation is unique in Europe.[24] At the end of June 1999 there were 760 German and 3,244 foreign stock corporations. There are regional differences between stock markets and many foreign corporations are listed at the Berlin stock exchange since the American Securities and Exchanged Commission (SEC) named it as a Designated Off-Shore Market.

23 Deutsches Aktieninstitut 2001, Tab. 05-5; Deutsches Aktieninstitut 1999a, Tab. 06-4-1.

24 In this connection it is interesting to note that in 1999 € 112,976 million in foreign shares were sold in Germany compared to only € 36,010 million in domestic shares. German residents acquired € 96,910 million's worth of domestic and foreign shares, so that 1999 saw a capital export of € 60,900 million. There is therefore a capital outflow from Germany.

The post-1997 growth in the number of public limited companies in Germany mentioned earlier is matched with a corresponding increase in the ratio of stock market capitalization to gross domestic product, shown in figure 4. Germany has typically lagged behind most other industrial countries in this regard and, at the end of 1998, the value of the stock market accounted for no more than 51.2% of gross domestic product. This, however, is a notable increase on the 1997 figure of 39.5% and the percentage jumped again in 1999 to 68%, it decreased slightly in 2000. The comparable percentages are on about the same level in Italy at 72.3% and in Japan at 69.0%, but considerably below France at 111.8% (1998: 68.1%), the UK at 183.8% and the USA at 153.3% in 2000.[25]

Figure 4: Stock market capitalization as a percentage of GDP in Germany

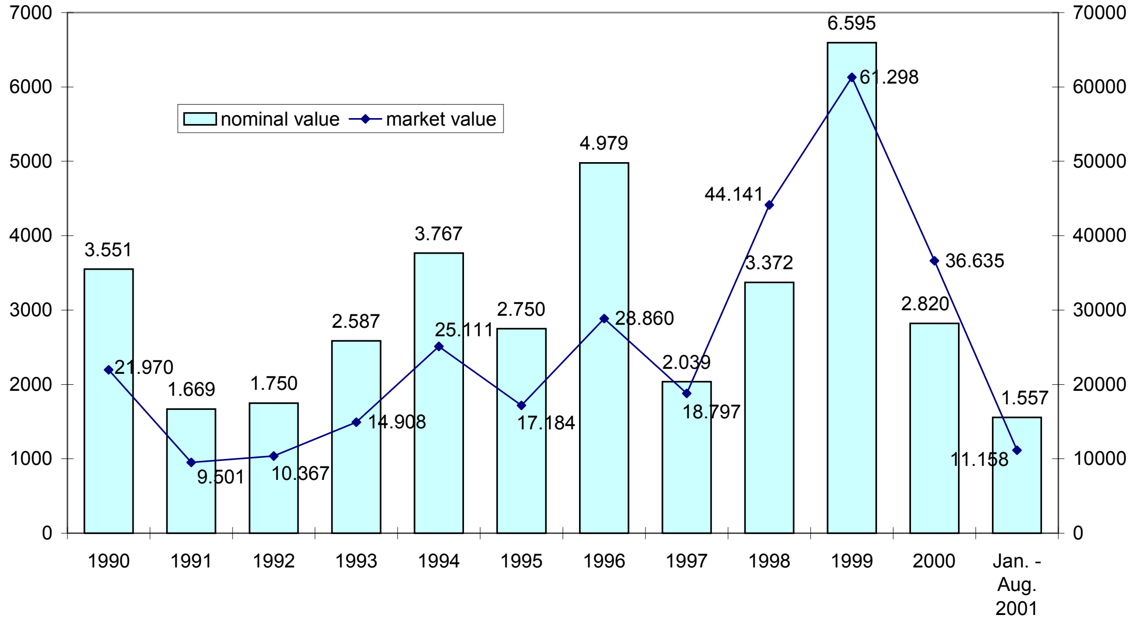


Source: Deutsches Aktieninstitut (2001: 05-3)

Figure 5, however, which includes developments in at least the first half of 2001, paints a rather sobering picture. After peaking in 1999, the issue of new shares by domestic listed companies rapidly declined again. Individual companies strongly affected this trend. The Deutsche Telekom IPO in 1996 and the two following issues in 1999 and 2000, as well as the Deutsche Post issue in 2000 determined the overall situation. In the first half of 2001, share issues were well below the average for the 90s in terms of both nominal and market value.

25 Deutsches Aktieninstitut (2001, Tab. 05-3)

Figure 5: Issues of shares of domestic listed companies (nominal and market value; in million DM)



Source: Deutsches Aktieninstitut (2001: 03-1)

Table 7: The 10 biggest new issues by market value (in € million).

	Year	All Share	Market value in € million	Cum. share		
1	1996	Deutsche Telekom AG	10,054.55	15.12	AM	Privatization
2	2000	Deutsche Post AG	7,582.16	26.52	AM	Privatization
3	2000	Infineon AG	6,245.10	35.92	AM	Spin off
4	2000	T-Online International AG	2,918.70	40.31	NM	Spin off
5	1996	Fresenius Medical Care AG	2,276.78	43.73	AM	Spin off
6	1999	Epcos	1,518.00	46.01	AM	Spin off
7	1995	Merck KGaA	1,104.33	47.67	AM	
8	2001	Deutsche Börse AG	1,072.05	49.29	AM	
9	1995	Adidas	949.16	50.71	AM	
10	2001	Fraport AG	913.67	52.09	AM	

Am= Amtlicher Markt (Official Trading), NM= Neuer Markt,

Source: Deutsches Aktieninstitut 2001, Tables 03-6 and 03-7, own calculations.

Between the beginning of 1990 and mid-2001 there were 571 new emissions by domestic companies, for 536 of which the issuing total is known. Over this period the Official Trading segment recorded 115 new issues, the Regulated Market 105, with

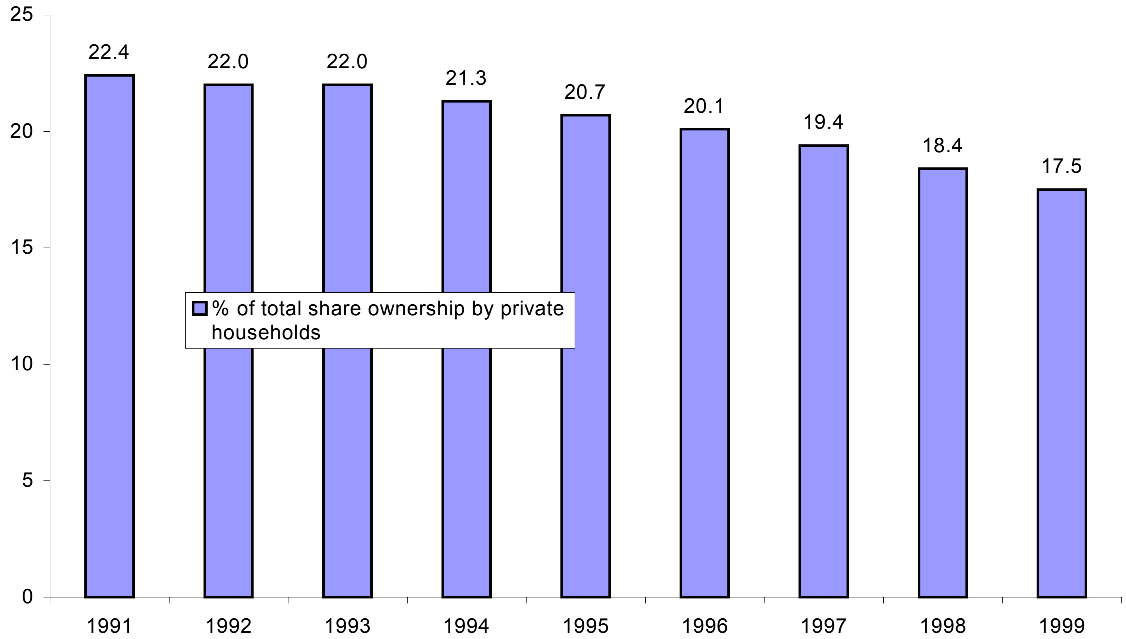
53 on the Unofficial Market. Most new issues, however, were on the Neuer Markt, namely 291. Even if the boom on the Neuer Markt brought relatively big proceeds in 1999 and 2000, in most cases issues were much smaller than in the Official Trading segment. This is also shown by the figures for the 10 biggest first-time issues (table 7). T-Online International, a spin off of Deutsche Telekom, was the only Neuer Markt company to rank among the first 10 major IPOs.

Privatization of the Deutsche Telekom (telecommunications) and Deutsche Post (postal services) alone together represented almost 27% of the issue total. The next four places were taken by spin offs of major companies (Infineon and Epcos from Siemens; T-Online from Deutsche Telekom, and Fresenius Medical Care from Fresenius). The 9 biggest IPOs represent half the market value of all floats between 1990 and 2001.

3.2 Attractiveness of Stock Markets for Private Households

As figure 6 shows, private households have a declining role in total share ownership. Private households owned about 15% of all shares in 1998 and this figure is declining. In 1998, shares and investment fund certificates made up almost 19% of the total portfolio of financial assets held by German households, whereas short-term savings deposits accounted for 28% and insurance policies for 19% (Deutsche Bundesbank 1999a: 50-51).

Figure 6: Private households share ownership



Source: Deutsche Bundesbank Finanzierungsrechnung 1991 bis 1999: 83

Although share ownership by private households has declined in Germany when compared to ownership by other shareholders, the importance of direct and indirect shareholdings in the household financial assets portfolio did increase from 5.5% in 1990 to 8.7% in 1998 (Deutsche Bundesbank 1999a: 50-51).

Ownership of shares and funds by private households has quadrupled from 204 billion DM in 1991 to 805 billion 1999 and has taken another big leap in 1999 up to 1,257 billion DM. The number of shareholders and fund unit holders in Germany is growing rapidly. 11.32 million Germans have now invested in shares and funds. When compared to 1999, this represents an increase of more than 3 million in the first half of 2000 alone.

Table 8: Number of shareholders and unit holders (1,000)

	1997	*1998*	*1999*	*2000*	*1. half-year 2001*
Shares and funds	627	911	1,518	2,748	2,694
Only shares	3,293	3,604	3,487	3,463	3,265
Only funds	1,681	2,274	3,226	5,617	7,480
Total owners of shares and funds	5,601	6,789	8,231	11,828	13,439

Source: Deutsches Aktieninstitut 2001: 08.3-Zahl-D, Infratest survey

The largest increase was in investment in funds. Interestingly, the number of investors in funds now exceeds the number of direct share owners for the first time. In the first half of 2001, almost ten million Germans invested in funds (see table 8). "This development shows that we are on the way to become a nation of shareholders comparable to other industrialized countries" (translation) comments Rüdiger von Rosen, board member of the Deutsches Aktieninstitut (DAI). Germans have now become "co-entrepreneurs", as DAI announced on the basis of Infratest surveys. "More Germans now put their money in investment funds than in shares. The success of savings bank investment funds and credit cooperative associations has made an important contribution to this development".[26]

In 1999, the proportion of the German population over 14 years of age who were investors in shares and funds had risen from 12.9% to 17.7%. Shares (direct and funds) constituted 9.4% of household financial assets, an increase of 0.7% over 1998 (8.7%).[27] In 1950, shares had represented 26.5% of the financial assets portfolio of the German family but their importance had declined to an all-time low of 3.8% in 1980.

Sections 3.1 and 3.2 have highlighted the narrow economic base upon which shareholder value must be built in Germany and suggests its focus is on a very small group of flagship companies. The following sections will outline for these compa-

26 "Investment Funds Attract Millions of New Investors", *Handelsblatt,* 2 August 2000: 1 (translated by the authors).

27 "Germany is Becoming a Nation of Shareholders", *Frankfurter Allgemeine Zeitung*, 2 August 2000: 27

nies how the balance of the structure of share ownership is shifting toward private and institutional shareholders. To understand what all this means we will first consider the changing structure of share ownership before discussing in more detail the rise of the institutional investor. The final sections of part three of this paper will look closely at the growing importance of the Neuer Markt, the boom in venture capital in Germany and the developments in the area of mergers and acquisitions.

3.3 Shifting Structures of Share Ownership

The pattern of share ownership is worth considering in some detail because such consideration brings out the strength and stability of the existing system as well as some interesting recent changes in behavior and motivation.

Table 9: Share acquisition in Germany 1993 to 2000

Share buyers								
%	1993	1994	1995	1996	1997	1998	1999	2000
Share purchases (DM bill.)	46.13	67.28	65.50	85.75	132.64	314.02	325.75	300.03
Private households	14.33	17.83	-5.19	12.24	6.03	2.55	8.29	7.67
Non-financial corporations	4.92	12.16	41.34	24.76	19.41	29.77	30.09	48.57
Government	2.45	8.78	16.50	0.26	-7.84	-6.30	-4.13	-2.33
- Non-financial sectors	*21.69*	*38.77*	*52.66*	*37.26*	*17.61*	*26.02*	*34.25*	*53.91*
Monetary financial institutions	26.66	13.15	21.28	21.06	10.55	6.30	17.41	15.84
Other financial institutions	19.09	34.77	22.89	14.41	31.58	26.96	14.51	36.27
Insurance companies	13.61	12.20	8.15	13.57	24.34	8.74	4.28	8.43
- Financial sectors	*59.36*	*60.13*	*52.32*	*49.05*	*66.46*	*42.01*	*36.19*	*60.54*
Rest of the world	18.94	1.10	-4.98	13.69	15.93	31.98	29.56	-14.44

Source: Deutsche Bundesbank 2001a: 40

The last column in table 9 shows the balance of share purchases for 2000. Private households had an 8% share in purchases. This was almost half the figure for 1993. Although private household share acquisitions in 1999 and 2000 were almost three times higher in absolute terms than in preceding periods, this group participated in lower than average measure in the stock-market boom. Non-financial companies acquired 49% of shares, thus constituting the largest category of shareholders in 2000. In 1993 this group purchased only 5%. In recent years, government has parted with state-owned enterprises, transformed into stock corporations, which produced adverse balances. A change is apparent in the financial sector. Monetary financial institutions and insurance companies have lost ground as shareholders whereas other financial institutions have strongly gained in importance. This indicates that the banks have been shifting their stock dealings to specialized subsidiaries. The banks have thus been able to meet the demand to concentrate on their core business while being in a still more effective position to manage and control their investments in companies.

The rise of open-end investment funds is a second important change. Between 1991 and 1999, such funds increased their share from a small base of 5.5% to 13.6% in 1999. According to the German Investment Trust Act of 1998 (Gesetz über Kapitalanlagegesellschaften – KAGG) these funds are allowed to hold up to 30% equity shares in their portfolio. Share-ownership in individual companies, however, should not exceed 10% of voting rights. New kinds of institutional investors, such as investment and private pension funds, are playing an increasing role in Germany's political economy. Foreign controlled pension funds, especially American, are also becoming more important and dominate foreign holdings, which now account for 16% of all German shares. These investors will be discussed in more detail in section 3.4.

The effects of these changes have nonetheless been somewhat exaggerated because the new kinds of institutional investors, as is the case with financial institutions, concentrate their influence on a very small group of companies.

In 2001, for instance, institutional investors owned 56 % of DaimlerChrysler, 50% of Preussag, 84% of ThyssenKrupp, 80% of Lufthansa, 93% of Allianz and 81% of Deutsche Bank (Deutsches Aktieninstitut 2001).

There is no doubt that the role of German banks has been changing rapidly since the mid-1990s, driven by a whole series of internal and external changes. Their role has been affected by the increasing importance of stock market new issues in company finance as well as by the creation of the Neuer Markt. The major banks and insurance companies have also strategically (re)defined share ownership as an asset management and investment fund business. This constitutes a major shift from 'patient capital' to shareholder value orientation in the German banking sector. Both shifts are reinforced by the increasing importance of domestic and, more especially, foreign pension funds. These developments are discussed in more detail in the section about the Neuer Markt.

In recent restructuring of the banking sector, investment banking has been a major strategic focus. Simultaneously, banks (and insurance companies) have begun to relax the system of cross-holdings and interlocking directorates that were central to the conduct of "patient shareholders". The number of such directorates has been declining for more than ten years: between 1986 and 1993, private banks reduced the number of seats held on the supervisory boards of the 100 largest German companies from 114 to 99 (Deutsch 1997: 22). The chief financial officer of Deutsche Bank declared publicly that his bank had for some years not filled all the supervisory boards positions which it was offered by other companies and would, in future, provide even fewer directors. Instead, he recommended the practice of foreign pension funds managers who meet with company management boards on a one-to-one basis.[28]

The banks have started to behave like pension and investment funds. Deutsche Bank, Dresdner Bank, and Münchner Rückversicherung have recently begun to spin off their ownership stakes in other German companies into separately managed companies. And the banks have announced that these holdings are to operate with shareholder value in view. Thus, at the end of 1998, Deutsche Bank established a subsidiary, 'DB-Investor' to manage the industrial assets owned by the bank. Deutsche Bank CEO Breuer stated that:

> "... with the new structure, we can control our industrial shareholdings in a more active and much more profitable way. This is good news for our shareholders."[29] (Deutsche Bank press release 1998, our translation).

Meanwhile, DWS (the investment fund of Deutsche Bank, founded in 1956 and Europe's largest investment company) had already become one of the most outspoken protagonists of shareholder value in Germany. Its former chief manager, Christian Strenger, had pronounced its independent shareholder value position on many occasions. Independent asset management companies were also launched by the other major German banks and by the big insurance companies such as Allianz, which founded Allianz Asset Management GmbH in 1998.

While acknowledging a certain "anglo-saxonization of the German financial system", due to intensified competition and the growing financial autonomy of large corporations, Deeg (1999) nonetheless concludes that:

> "there is much evidence that the impact of financial market integration is not unequivocally that of convergence or harmonization in economic structures, corporate governance, and patterns of adjustment. In many cases the German system has accommodated such pressures while finding ways to preserve old patterns. For example, the banks have reduced their industrial holdings and their role in corporate monitoring; but the system of insider control or governance continues because other large German firms are buying stakes in each other" (p. 121-122)

Another potentially significant development is the emergence of German owned private pension funds, which are growing rapidly from a very small base. German public pensions are funded through a pay-as-you-go system (Jackson/Vitols 1999).[30] In 1992, social security accounted for almost 70% of retirement income in Germany almost a further 20% made up of public employer pensions (14.4%) and private employer pensions (5.3%) (Schmähl, 1994: 393). The investment behavior of employer pension funds is regulated by the life insurance laws, but the primary alloca-

---

28 Speech by Dr. Thomas R. Fischer, Deutsche Bank chief financial officer, at the 'First Humboldt-Forum on Economics and Management of Corporate Governance' at the Humboldt University, Berlin 4-5 June 1999.

29 In terms of market capitalization DB-Investor ranks among the top 15 DAX companies. Industrial assets make up 45% of the total market value of the Deutsche Bank AG. (Press release, Deutsche Bank, December 16th, 1998, our translation).

30 Employer and employee each contribute 8.85% of gross earnings up to a maximum of DM 6,500. In addition to these earnings-related contributions, the budget of the federal government provides a subsidy which amounts to roughly 18% of expenditures.

tion of such assets is the company itself, who can invest the funds in the normal course of its business. As the firms pension liabilities are tax deductible, the practice affords German companies a tax-effective means of borrowing from its employees and one which, in many cases, is more important than equity issues for German firms. The percentage of employer pension funds invested in company book reserves had fallen from 67% in 1981 to 57% in 1996 but it remains the prevalent practice. A further 8% of assets were placed in support funds, which are generally lent back to the employer as an interest-free loan. Remaining employer pension assets in 1996 were allocated to private pension funds (22%) or to life insurance companies (13%) (O'Sullivan, 2000: 262-263).

Private pensions in Germany represent a supplement to this long established statutory regime whose finances appear to be endangered by demographic change and increasing life expectancy. Private pension funds are relatively new because they were formally recognized only in 1998 under the 3rd Financial Markets Promotion Act.[31] Specific pension funds outside the public pensions system had existed previously in various forms but they were of minor importance. In terms of financial weight, private and semi-public pensions are of minor significance (see Baums and Fraune 1995: 97). In 1996 the fund value equaled only 6% of GDP in Germany, whereas in the US the figure was 57.5% and in the UK 93.2% (Nürk 1998: 181). Payments into pension funds are not tax deductible in Germany, as they generally are in the English-speaking world. Tax deductibility of contribution to private pension funds, however, is a central topic in the current pension reform.

In May 2001, the German Bundestag passed legislation to reform statutory old-age pension insurance and in March 2001 to promote capital-funded provision for old-age (Altersvermögensgesetz-AvmG and Altersvermögensergänzungsgesetz AVmEG). The aim is the safeguard the long-term contribution rate, which is not to exceed 20% before 2020 and 22% before 2030 (BfA 2001). At the same time pensions are, as far as possible, to be maintained at the current level. For this purpose supplementary, private, tax-supported old-age provision has been introduced. The state-guaranteed pension is combined with a voluntary, private old-age provision scheme. The main beneficiaries are people in covered employment. Government support does not give preference to a particular type of investment, but it must be ensured that at least the amount paid in can be paid out as from the beginning of the period of payment. The government supports this supplementary pension with fixed amounts, a basic allowance per insured person plus child allowances. It is expected that this support will strongly stimulate financial asset formation in institutional forms of saving (investment funds, insurances, pension funds) (Deutsche Bank Research 2001). At the end of 2000, the value of pure equity funds in Germany was about € 213 billion, which, owing to developments on the stock market, fell to € 195 billion by mid-2001. Mixed funds play less of a role in Germany, with a volume of only € 20 billion at the end of 2000. Shareholdings therefore constitute 18% of the total financial assets of German households. In the future, a shift in invest-

31 These funds are called 'Altersvorsorge Sondervermögen'.

ment forms is predicted. Cash, call deposits, and other bank deposit monies will become less important. Bonds will not be able to participate in the coming boom. Direct shares, as well as insurances and pension funds will benefit as forms of investment from the "Riester Pension". This will increase the importance of institutional investors.

3.4 The Rise of the Institutional Investor

The developments described in the last section seemed to indicate the emergence of a new kind of institutional investor, as German owned and run investment funds join the American funds that invest American savings in German companies. By 1999 there were 34 investment funds offering private pensions in Germany and 25 of these were owned and run by German financial institutions. The position of pension funds as institutional investors is becoming stronger, and the funds are mainly interested in the DAX 30 firms, which are guided by shareholder value principles. They are joined by US pension funds, which are increasingly engaged in buying shares and putting pressure on company management to act on behalf of shareholder interests (The Conference Board 1999).

The increasing influence of these funds is controversial and their future role is uncertain. Some observers from the financial community already see pension funds as "a sea change in German old-age provision"[32]. Nürk finds that:

> "Pension funds and other forms of funding via external institutions ... play only a minor role in the financing of old-age provision." (Nürk, 1998: 181)

With regard to institutional investors, the OECD states: "The increasing importance of institutional investors (life insurance companies, pension funds and investment funds) means that their impact on the functioning of financial markets is steadily growing." There are increasingly strong links between institutional investors and the banking system. For example, banks have moved on a large scale into the investment fund business. Banks with extensive branch networks have become important distributors of life insurance products. Financial deregulation, technological advances in information technology, and greater competition have blurred demarcation lines between banks and the securities industry (OECD website Institutional Investors).

The exact definition of institutional investors is still a matter of debate. According to Wymeersch (1998: 1179-1181) the definition: "apart from the usual pension funds – includes insurance companies, investment funds and companies, and credit institutions or banks that have been allowed to hold shares either in their trading or in their investment portfolio" (see Baums/Fraune, 1995). "Institutional investors include banks, insurance companies, investment funds, and pension funds. Pension

---

32 This is the opinion of Manfred Laux, chief of the German Investment Society *(Deutsche Investment Gesellschaft*, DVI), reported in the Wall Street Journal, 20. April 1998, which can be found at: http://www.bvi.de/as/11-rechtsuntern.html

funds and institutions that collect and manage capital in provision for old age. In Germany they include the occupational pension schemes, the supplementary pension schemes for public employees, and pension plans and provident funds pursuant to the Act on the Improvement of Company Provision for Old Age (BetrAVG)" (Baums/Fraune, 1995: 97)

Baums/Fraune (1995) analyzed the different institutional investors and their influence on the stock corporation in Germany. They looked specifically at voting rights and their exercise in credit institutions, insurance companies, investment companies, etc. Despite the fact that investment companies are owned by credit institutions, they are counted as institutional investors. But they were found not to be independent agents controlling stock corporations. In general, they do not vote independently of the custodian bank in the interest of the people who have placed their money with them. The head of the DWS, the largest German investment trust, therefore denied the supposition that the discussion of the power of the banks were now be followed up by a debate about the power of funds. He argues that the German Investment Trust Act does not permit investment companies to hold more than 10% of the voting rights of a company, and states that only in some exceptional cases does the DWS itself own more than 2% of the shares of a company. Moreover, he argues that investment companies do not seek direct decision-making powers through the supervisory board because of the potential for conflict between their investment decisions and their ties with the supervised company.

3.5 The Neuer Markt and Venture Capital Boom – Indicators of a Tidal Change?

Until recently, only a very small number of German companies were quoted on the stock exchange and they rarely used new equity issues for financing purposes. The introduction of the *Neuer Markt* (New Market) represents a significant change in several respects.

The Deutsche Börse AG created the Frankfurt based *Neuer Markt* in 1997 with the aim of allowing new and developing companies to make initial public offerings (IPOs) and to support the flow of venture capital. It was an immediate success.

The institutional arrangements of the Neuer Markt are based on the American model of the Nasdaq. The accounting standards used and the quarterly reporting that is required with a view to enhancing transparency are similar to the Nasdaq. Different from the Nasdaq is the institution of designated sponsors on the Neuer Markt rather than market makers. Another difference is the lock-up period of six months for existing shareholders on the Neuer Markt. Finally, unlike Nasdaq, on the Neuer Markt, there is an initial hearing of new entry candidates by a commission to make a final decision about registering the company or not. The selectiveness of these hearings seems to have been reduced over the years, however. Appendix 2 gives details of the main listing requirements and ongoing obligations of each of the two markets.

Because of recent problems with companies listed at the Neuer Markt, there is a debate concerning the sale of shares by management. These share sales may influence the portfolio policy of large institutional investors. The proposed changes for the rules are that all share sales must be made public to all investors and that the lock-up period has to be longer.

The Neuer Markt lock-up period used to be six months as Appendix 2 indicates. Because of recent scandals (EM.TV etc.) the Deutsche Börse AG introduced some changes here in March 2001. Members of the board and of the supervisory board will have to disclose share sales within three days.

The number of companies listed on the Neuer Markt grew rapidly until mid-2000, when it peaked at 338 companies. The number has since shrunk to 319 (March 2002). The market value of the companies listed increased still more sharply, from € 4.6 billion in 1997 to € 121 billion in 2000, but also fell much more steeply to € 48.9 billion in 2001, recovering only slightly at the end of the first quarter of 2002. By June 1999, 120 companies were listed, and new companies were joining daily (DG Bank Research, 1999: 4). By March 2000 there were already 247 and by the 26 October 2000 there were 323 companies (DG Bank Research, 2000: 4).

Table 10: Number and market value of companies on the Neuer Markt

	1997	*1998*	*1999*	*2000*	*2001*	*2002*
No. of companies	17	63	201	338	326	319
Market value (in € billion)	4.7	26.1	112.5	121.0	48.9	56.0

Source: Berliner Zeitung, March 9/10, 2002: 31

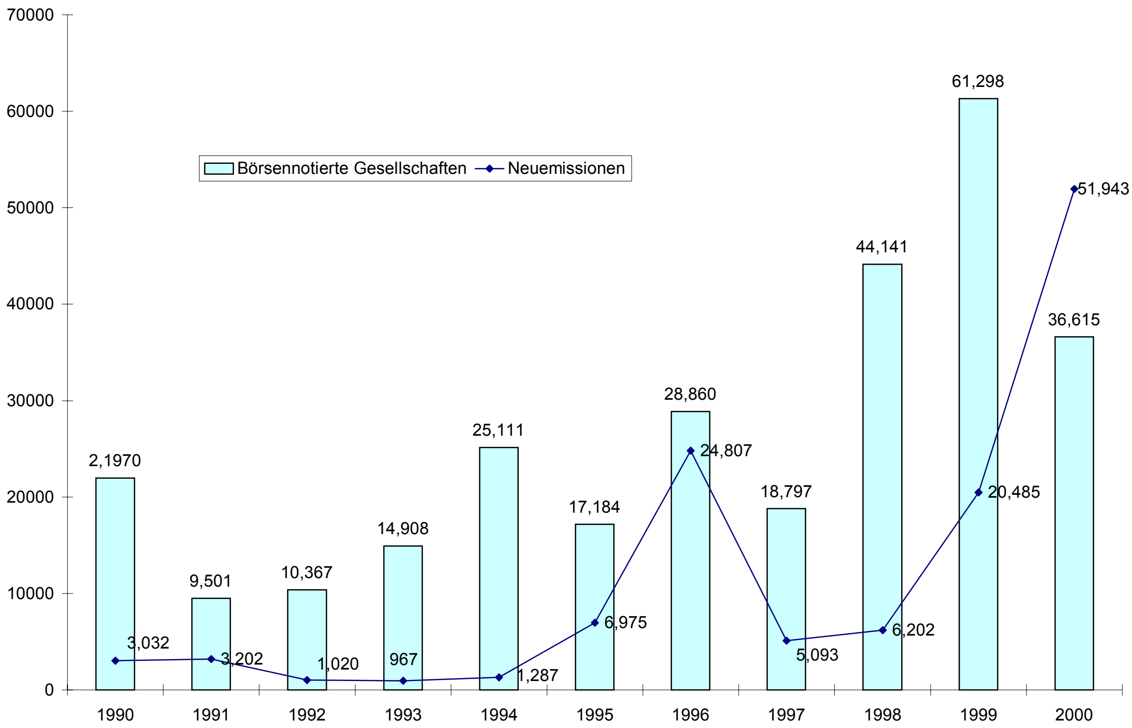
The *Neuer Markt* is, of course, much smaller than the long established main market; in 1999, the overall market capitalization of the New Market amounted to 6.7% of the capitalization of the DAX 30 quoted on the main market. But, in terms of share price appreciation, the New Market outperformed the DAX by more than 400% in its first two years of existence. As of March 2000, the New Market was the leading European growth bourse: its market capitalization made about 76.2% of all European growth bourses (DG Bank Research 2000: 6).

As table 10 shows, the development of the Neuer Markt was a decisive factor in the steady increase in the ratio of new issues to total issues in the late 90s. In 2000 they outstripped seasoned issues for the first time.

The unexpectedly dynamic development of the New Market has often been cited as a sign of major change in Germany. The *Financial Times* saw it as an indication of:

> "a new business culture ... which has little in common with the traditional consensus driven company, typical of the *Mittelstand* or medium sized business sector. The *Neuer Markt* ... reflects the changing face of German capitalism." (Harnischfeger, 1999a: X)

Figure 7: Share issues by German listed companies 1990-2000



Source: Deutsches Aktieninstitut 2001: Tab. 03-2

As the OECD observed, the New Market brought several important changes to Germany. Firstly, other financial intermediaries as well as banks have been active in introducing firms to the exchange. It has often been argued in the past that, although the large banks dominated the business of initial public offerings, they had no real incentive to promote stock market listings because IPOs could reduce their traditional lending activities. "A second feature has been to accompany each newly-listed firm with a 'market maker', thereby attempting to improve market liquidity. Improving liquidity is also important from the viewpoint of ensuring exit possibilities for initial risk investors in the company" (OECD 1998: 119). The major German banks did not foresee the dynamic development of the New Market and have missed much of the small and medium-sized IPO business.

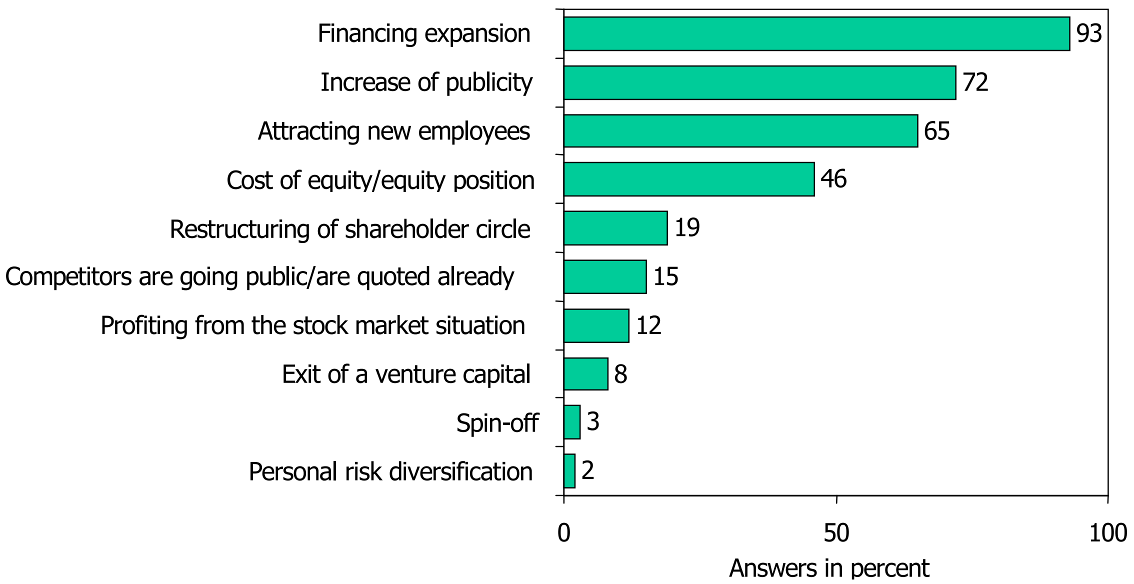
By the end of 2000 there were 56 foreign companies quoted on the New Market, a majority of which were American and Austrian. As per 2 January 2002, 11 Neuer Markt companies had a market capitalization in excess of € 1.000 million. Four firms had a capitalization of between € 1.000 million and € 500 million, and 68 between € 500 million and € 100 million.

In terms of the different industries quoted, information technology companies (IT services, hardware and software) are the biggest group in absolute terms, but in market capitalization terms they represent only about 25%. This is why the NEMAX 50 is underweighted in this sector (DG Bank Research 2000: 7). Interestingly, it is assumed that 70% of the free float is owned by institutional investors. At the start of the New Market in 1997 private shareholders predominated (DG Bank Research 2000: 6).

A study by Roland Berger shows that information technology companies have a relatively small workforce of about 250-450 employees. Industrial and telecommunications companies have the largest numbers of employees. They also showed the biggest growth rates in terms of employment before and after the IPO. In early June 2000, 269 companies were listed on the New Market and they employed 106,000 people, with employment growing about 30% after the IPOs. The study assumes that by the end of 2000 there will be 368 companies at the Neuer Markt with 162,000 employees. On average, the listed companies have 394 employees.

The reasons and motives to list on the Neuer Markt were analyzed in a study by a consultancy company (see Figure 8 for details). According to the surveyed companies, the financing of expansion was the most important reason to list at the market.[33] Increasing publicity and attracting new employees were given as further important reasons to list at the Neuer Markt.

Figure 8: What were your motives for going public?



Source: L.E.K. Consulting Survey, August 1999 (n=44) in L.E.K.: Analysis of Success Factors beim Börsengang, Munich, January 2000

Vitols (2000) analyzed the corporate governance structure of the companies listed at the Neuer Markt. He investigated 300 companies and found that in 65% of these companies corporate governance corresponded with the typical German pattern of "Herr im Haus" leadership, i.e. the founder/founding family owned a blocking share, appointed the leading management, decided on the composition of the supervisory board and at the same time was the strong man in the executive board.

33 One of the listing requirements of the Neuer Market is that at least 50% of the volume of the placed issuing must be used to increase capital (See appendix 2).

This type of corporate governance suggests that the separation of ownership and control is reduced, not to say non-existent in these types of companies.

The innovation strategies of these companies were also described as being more incremental. Only 15% of the companies are majority venture capital financed and have a radical innovation strategy.

Up to Spring 2000, the Neuer Markt had been beating all expectations. The number of companies introduced grew from 13 in its first year, 1997, to up to around 300. The peak in terms of market capitalization was March 2000. Since then a steep fall of share prices occurred especially among Internet enablers and providers. At the end of 2000, the outlook for the Neuer Markt is bleak. Due to low market capitalization financing via new shares is no longer a viable option. Many companies face a liquidity crunch and quite a few have been put on "death lists". Due to scandals and the unprofessional behavior of certain Neuer Markt firms, companies on the Neuer Markt increasingly appeared to be unreliable and speculative compared to firms listed on the official market, whose reputation in terms of professionalism etc. remains intact. In September 2000, for example, a Neuer Markt company, Infomatec, found itself under investigation by the market's financial regulator because of announcements of huge contracts that never materialized and some of its managers face criminal charges. In the same month, Gigabell, a telecom and internet service group, became the first Neuer Market company to file for insolvency.[34] And this was only the beginning: many other firms followed suit, and the shake-out has continued in 2002. As table 11 shows, the market value of Neuer Markt companies has, on average, more than halved, and many of the heroes of the early years are now mere penny stocks.

It is not yet clear if the Neuer Markt represents a decisive shift of the German system towards new economy dynamics. While it has certainly managed to show the potential for mobilizing venture capital for new economy firms, a lot of the firms on the Neuer Markt were not really new economy firms (such as Sachsenring and others) and others did little more than trading with licenses.

The risk also exists that disappointment with net performance could signal a death knell for the Neuer Markt. This is a certainly a possibility if even more scandals and spectacular failures emerge. Many Neuer Markt companies do, however, have substance. There is a growing tendency to differentiate the overall market into two different segments with quite different performance levels. There is currently, for example, a clear distinction made between Internet start-ups and biotech firms. This may ensure that the overall verdict with regard to the Neuer Markt will not be completely negative but that what is important is to differentiate its firms.

It also remains to be seen what effect the near collapse of the Neuer Markt will have on the recent boom of investment capital, especially in the area of early-stage investment. In any case, the exit option, which was regarded as a major achievement

---

34 "Testing times for a once solid market" in supplement: Survey of German Banking, Finance and Investment, *The Financial Times,* 23 October 2000: 7.

in terms of changes of the German institutional setting, is being blocked at the current stage.

Comparing 1999 and 2000, it is evident from the yearbooks of the Federal Association of German Equity Investment Companies (Bundesverband Deutscher Kapitalbeteiligungsgesellschaften BVK), that there has been a considerable shift in funding sources on the venture capital market in Germany. In 1998, 51.10% of finance came from the banks while in 1999 banks only represented 31.96%. Pension funds have increased their share to 8%, and are thus among the strongest investors in the VC market.

Investors in this market have marked preferences. For 1999, the BVK noted a stronger shift towards technology-related companies. Software companies headed the field with 14.9% of gross investment, followed by communication technologies with 11.6% and mechanical engineering with 9.8%. In 1999, the overall portfolio was dominated by investment in mechanical and plant engineering at 13.7%, followed by data processing/computer hardware and software at 12.3%, and consumer goods at 8.4%.

Table 11: Venture Capital by Sector in 1998 and 1999 – Total Portfolio

	1998		1999	
	Volume (%)	Number of Companies (%)	Volume (%)	Number of Companies (%)
Machinery Industry	15.99	9.8	13.74	10.22
Consumer goods	12.45	11.49	8.42	12.74
EDV / Computer Hard- and Software	8.82	8.29	12.34	10.98
Trade	8.59	11.70	7.08	10.20
Electronics	4.73	7.07	3.37	5.6
Communication Technology	4.73	3.41	7.39	5.87
Biotechnology	4.12	3.36	6.05	4.33
others	40.57	44.88	41.88	40.06

Source: BVK (Hrsg.): Jahrbuch 1999: 79, BVKStatistik 1999: 29

According to the BVK, the trend towards technology-related sectors is accompanied by rapid development in early-stage investment (especially in technology), whereas buy-out financing tends to affect traditional sectors.

Most investors needed money to expand, the BVK claims. Compared with other European countries, buy-outs are relatively insignificant in Germany (still less so in the United States), but expansion financing is important in this country (and still more so in the USA). In America, early-stage financing is relatively high compared with Europe and Germany (cf. Schefczyk 2000: 117)

In comparison with other countries in Europe and elsewhere, the German venture capital market still has room for development, although international sources of venture capital have strongly increased in Germany. Schefczyk (2000: 115) notes that the shares of individual countries in the European venture capital market vary considerably: Britain 48%, Germany 13.2%, and France 11.9%. Moreover, he points out (ibid.: 116) that in 1998 the German venture capital portfolio was 2.8 per mille of GDP. "Given this relative market size, however, the German market trails other countries in this international comparison" (ibid.: 115).

> "The comparison of market size also shows that the United States market – measured by the portfolio – has considerable weight internationally. The U.S. portfolio amounts to about €45.5 billion compared to €32.5 billion for the four largest national European VC markets together." (Britain, Germany, France, Netherlands) (ibid.: 116).

However, it is not that easy to compare markets internationally, because the statistics are based on differing definitions of venture capital. To obtain a more precise comparative picture of venture capital investment in new industries, it is useful to focus attention on specific sectors such as information and communication technology, biotechnology and medical technology. In the United States, according to Pricewaterhouse Coopers, over 90% of total venture capital in 1999 flowed into these high technology sectors, while in Europe the figure was only 26%. In Britain in 1999 about €2.1 billion was devoted to hi-tech sectors. This is an increase of 17% over the previous year and 83% over 1997. In Germany, venture capitalists invested €1.3 billion in hi-tech in the past year, 98% more than in 1998 and almost three times as much as in 1997. Germany leads Europe in the proportion of early-stage investment compared to total investment. In Germany, 32% of all VC finance goes to young enterprises; while in France the figure in 19%, in the Netherlands 20%, in Italy 8%, and in Portugal 7%. In Britain, it is only 2%.[35]

3.6 Mergers and Acquisitions

This section analyses what, if any, influence the growing importance of the stock market is having on merger and acquisitions activities. This involves discussing the extent to which shares are recognized by German companies as an instrument for takeovers and asking whether a "market for corporate control" is emerging.

We have argued elsewhere (Jürgens et al., 2000) that hostile takeovers have been a rare phenomenon in Germany. However, the number of mergers and acquisitions involving German companies has risen enormously in recent times, involving foreign buyers and sellers as well as all-German transactions.[36]

Financial Securities Data records 23,012 completed mergers and acquisitions worldwide in 1999; ten years earlier the figure had been only 9,838. Still more impressive is the rise in the value of these transactions: in 1990 they were worth $ 454 billion and in 1999 $ 2323 billion. And in the first three months of 2000, Germany

35 "Venture capital statt Fußball", Financial Times Deutschland, 4 July 2000: 35

36 "Urge to Greatness", *Wirtschaftswoche*, 15 Sept. 2000, No. 29: 56.

became the second largest M&A market in Europe after Britain; in the first quarter of 1999 it had still ranked seventh.[37]

Table 4: Number of M&As with German Companies Involved

	1994	1995	1996	1997	1998	1999
Number of M&As with German companies involved	1,249	1,577	1,723	1,900	2,046	1,845

Sources: EU Commission, M&A International

"The number of foreign companies taken over by German companies reached a record level in the first half of 2000".[38] Between 1995 and 2000, 231 foreign companies were acquired by German buyers. In 1999 there were 170 transactions, according to the consultancy firm M&A International. German companies were especially interested in American firms. The managing director of this firm interprets the rise primarily as evasive action in view of a lack of companies on the German market. Owners hesitated to sell because from 2002 onwards it will be possible to sell firms free of tax. The number of German firms sold to foreign buyers dropped from 359 in 1999 to 168 in the first half of 2000. American companies were the largest group of buyers.

"The number of transactions in which both seller and buyer were German dropped from 485 to 354 in the preceding year".[39] Interestingly, the most frequent mergers and acquisitions were in the data processing sector where there were 158, and the greatest volume of transactions was in telecommunications, followed by information technology. The volume of transactions involving German companies rose to DM 507 billion, almost ten times the previous year's total of DM 53 billion. During the same time period, the number of transactions fell from 1,014 to 753.

One of the peculiarities of the German case is the emergence of management commitment to shareholder value, without being forced by external pressure from investors or by a threat of a hostile takeover. A recent research report by J P Morgan identified 222 hostile bids in Europe since 1990. Only four of these bids involved German companies, however, and the only successful hostile bid was Krupp's $1.0 billion acquisition of Hoesch in 1991 (Gibbs 1999: 7). Most of the hostile European bids during this period involved British firms who made no fewer than 148 hostile bids. These figures are more remarkable if we remember that German companies have been active participants in the recent European merger and acquisition wave.

In view of the recent hostile takeover of German firm Mannesmann by UK firm Vodafone discussed earlier, the issue of takeovers has indeed become an important topic on the agenda of corporate boards everywhere in Germany. German companies became concerned that they might become the next target of an unsolicited

37 "The Human Being is More Important than Any Figure", *Süddeutsche Zeitung*, 4 July 2000: 27.
38 F.A.Z., 26 July 2000: 23
39 Ibid.

offer and the Mannesmann precedent made them starkly aware of the need for a strategic response to what have previously appeared as a distant threat. The Mannesmann takeover highlighted the choice they must face: raise the barriers and reduce the exposure of the company towards the stock market or increase their market value by enforcing shareholder value principles. The introduction by a growing number of German conglomerates of reporting on divisional performance is one example that the latter option is what is being adopted by such firms. The extent to which firms are doing so and the manner in which such practices are being introduced will be discussed in more detail in section 5.

While the financial system is changing very rapidly, as new actors, motivations and behaviors assert themselves, it is much more difficult to find signs of erosion within the system of co-determination. Indeed, the system of co-determination is seldom attacked openly by company management.[40] On the contrary, quite a few top managers praise the system warmly when confronted by institutional investors. A cynic might observe that German managers have *ulterior motives* for praising a system which serves as a protection for incumbent management against hostile takeovers which is, of course partly why Anglo-Saxon management has reservations about co determination. The low number of hostile takeovers in Germany seems to indicate that co-determination has indeed served as 'poison pill' for potential predators whether foreign owned or German.

40 However Eberwein and Tholen (1990), in their study of manager mentality, found that a majority of company CEOs were less than enthusiastic about co-determination. Only 9% of managers regarded co-determination as a support for implementing important decisions and 27% saw it as a disruption in their company. However, 34% accepted co-determination "as a necessary element of a pluralistic society" (Eberwein and Tholen 1990: 259, our translation).

4. Co-determination and Labor in Germany – Recent Dynamics

On the whole it seems that co-determination still stands strong and criticism of it is almost taboo.[41] However, there are a number of tendencies that may undermine the principle:

– The relocation of manufacturing operations to overseas sites and the shift to a service economy are weakening union power in companies.

– Discussions about a European corporate charter and 'best practice corporate governance' at the OECD, IMF and World Bank level are likely to pose problems for existing German practices.

These developments are recognized in the research program on 'Co-Determination and New Company Cultures' (Bertelsmann Stiftung; Hans-Böckler-Stiftung (eds.) 1998) that nevertheless broadly defends the status quo. The program set up a commission on co-determination as a steering board, including high-ranking representatives from employer associations, unions, government, and academia. The commission's executive report unanimously endorsed co-determination in its existing form. It recognized that co-determination could be only one element of corporate governance for companies engaged in competitive markets, which have to take into account the interests and needs of all stakeholders. More significantly it concluded that "co-determination today is no longer questioned - especially by the employer side." On reviewing the recent debate about best practice and corporate governance, the report concluded that "new regulation of co-determination to improve the functionality of the supervisory board will not be necessary." (Bertelsmann Stiftung and Hans-Böckler-Stiftung 1998: 7)

However, despite the report's endorsement of existing institutions, it also drew attention to the way in which co-determination is being structurally eroded by economic restructuring and the trend towards a service economy, at the same time as the capital market is making new demands.

The report distinguishes between firms whose workforces are represented both on the supervisory board and on works councils and those whose employees are represented exclusively through works councils. A third group is made up of firms in which there is neither supervisory board nor works council co-determination. This final group is made up of very small companies with less than five employees and

41 The OECD (1998: 22), for example, in its recommendations does not adopt a position of opposition in principle to the two-tier system. Thus, the OECD concludes that: "Although the structure of corporate boards for publicly traded corporations differs among OECD nations – for example, by including both single- and two-tier boards – board independence can be promoted in any type of board system."

the majority of companies with less than 20 employees. As shown in table 13, empirical analysis indicates that the importance of this group in terms of employee numbers was found to have grown to more than 60.5% by the mid 1990's because there is a shift to the establishment of smaller firms and since the existence of works councils in small establishments is usually very low – less than 1% in firms with 5 to 10 employees (Hassel 2000: 135).[42] As a consequence, the percentage of employees represented by a supervisory board and/or a works council also declined significantly.

Table 13: Co-determination Coverage in the German Private Sector

Level of co-determination	*1984*	*1994/95*
Supervisory board and works council	30.5%	24.5%
Works council only	18.9%	15.0%
None	50.6%	60.5%

Source: Bertelsmann Stiftung and Hans-Böckler-Stiftung (eds.), (1998)

In addition to this change in economic structure which is disadvantageous to co-determination, economic restructuring causes an erosion that is even more far-reaching and leads to a disjunction between company structures and the organizational frame for works councils representation (Streeck, *Tagesspiegel,* 13 February 2001; Wehling 2000: 131).

42 A sample shows that in bigger firms the existence of works councils increases: In companies with 50 to 100 employees it grows up to 67,7% and in firms with more than 250 employees it reaches a percentage of 98,3 (ibid: 135).

5. Company-centered Management Orientation – Recent Changes

Compared to discussing the role of the banks or the coverage of co-determination, it is more difficult to generalize with confidence about the orientation of managers. But this is an interesting and important topic, not least because it brings out the continuing importance of product markets and managerial initiative, both of which in the German case appear to have been more important initiators of change than capital markets and shareholders.

In the first half of the 1990s, German companies went through a period of profound changes. To get over a short, sharp recession and meet product market challenges, lean production and business process re-engineering were implemented widely. Many companies segmented their operations in business units or decentralized parts of the company to profit centers. Companies also changed from functional to product and process oriented types of organization and outsourced 'non-core' activities. This restructuring was often linked to company strategies of developing new businesses with higher growth potential.

As Vitols (1999) argues, the challenge was product market change and not capital market pressure and the strategic response of changes in orientation and company restructuring were initiated by company management acting on its own initiative not under pressure from institutional investors. Thus, we have the paradoxical situation that practices and processes commonly associated with the introduction of shareholder value orientation in Germany were initiated to a great extent by company management in the industrial sector.

The modified company structures and strategies required new controlling and management incentive systems which used the language and techniques of management for shareholder value and suited the agenda of the capital market. The executive boards could no longer directly manage individual business units. Careers could no longer be made within the functional chimneys of giant companies. New criteria for resource allocation and management promotion were needed: this is where shareholder value came in as the answer to an industrial problem. It is in this context that we find the rapid spread of innovations such as the fixing of financial targets for evaluating management performance, new controlling and accounting systems, and stock options as management incentives.

Almost all of the DAX 30 companies now publish financial targets, often accompanied with the declaration that under-performing company units will be sold off. Many of these targets are specified in terms of return on capital or assets as recommended by those American consultants and academics who recommend shareholder value and as required by the new kind of value oriented investor.

Thus, for instance, DaimlerChrysler in March 1999 introduced a new value orientated controlling system (DaimlerChrysler 1999). The system set a Return On Net Assets (RONA) of 15.5 % before tax as a target for the 23 - 24 business units of DaimlerChrysler and all 5,000 top managers of the company have recently been trained on the subject. Another example is Metallgesellschaft, a heavy industry conglomerate. Metallgesellschaft announced that its 44 business units had, as a matter of policy, to achieve a leading position in their line of business and a 14% return on capital employed. (Harnischfeger 1999d: 14). More recently Siemens has also introduced a value-oriented measure called GWB *(Geschäftswertbeitrag* or contribution to business value). Each business unit has to calculate if its earnings are higher than capital costs. The total capital costs for Siemens AG are 8% (after tax) and there are different capital costs for individual business units which trade in different markets. The net result is that "... each of the 16 operating divisions is measured by its earnings on net capital employed." (Harnischfeger 1999b: XIV)

Another significant development is the role of employee ownership participation schemes. The most common forms of employee participation on the basis of share ownership are the following:

- *Employee shares,* which are offered to employees at a reduced price and which can be resold only after a certain period. Although employee shares are the most widespread form of employee participation – both as regards the number of employees (78%) and capital (88%) (cf. table 14) – they have no motivating effect because of the broad distribution (cf. Wirtschaftswoche No. 15/8 April 1999: 90);
- *Convertible stock warrants:* They are employee bonds on which normal interest is payable and which can later be converted into stock.
- *Stock options:* On the basis of option rights, employees purchase shares in their own company at a later point in time at a (strike) price set in advance, which is generally the price of the stock on the date when the option rights are issued. Option rights are granted free of charge so there is no risk of loss.
- *Stock appreciation rights* (SARs): Virtual stock options, where the company pays its employees the difference in cash between the issue price and the market quotation on exercise of the option. SARs do not require approval at the company's annual general meeting (cf. Spegel, 1999:171).

With the exception of employee shares, these incentives correspond to different types of stock option plans, each of which has differing requirements and consequences in terms of accounting and company law.

It is interesting to note that most companies offer their employees dormant equity holdings. However, employee share schemes involve by far the greatest number of employees and represent the largest absolute amount of capital.

From the perspective of the unions, there is an on-going discussion on whether, for example, employee shares can play an important role in company policy as a blocking minority in the event of hostile takeover bids. There is also discussion on whether it may be advisable to organize holders of employee shares in specific shareholder associations to underpin statutory co-determination. The question facing unions is how to determine the right policy mix of "participation in corporate success", security of employee capital investment and job security.[43]

Table 14: Forms of capital participation of employees in Germany

	Companies		*Employees*		*Capital*	
Form of interest	*absolute*	*%*	*absolute*	*%*	*DM mio.*	*%*
Dormant equity holdings	650	24.1	200,000	8.8	355	1.4
Loans	500	18.5	100,000	4.9	800	3.2
Indirect participation	400	14.8	80,000	3.5	360	1.4
Employee shares	400	14.8	1,800,000	78.0	21900	87.6
other	850	27.8	120,000	4.8	1595	6.4
Total	*2700*	*100*	*2,300,000*	*100*	*25000*	*100*

Stock options are not included in this table.[44]

Source: Arbeitsgemeinschaft Partner in der Wirtschaft e.V. (agp), Press Release March 28th, 2000.

However, to describe the trend towards greater financial participation by employees as "co-proprietorship instead of co-determination" is to ignore the proper function of co-determination by suggesting that one can be replaced by the other. Firstly, employees do not own sufficient shares to be able to exert significant pressure on corporate policy. Secondly, in the event of the company going bankrupt, employees who acquire stock lose not only their jobs but also property without being in a position as owners to influence the fate of the company in any decisive way.

Stock option plans in particular play an increasingly important role as company-oriented incentive systems. In this section we discuss their diffusion and their distinctive accounting, fiscal, and company law features in Germany.

The issuing of options in connection with share buybacks and increases in share capital has been possible only since adoption of the Act on Control and Transparency (KonTrag) on 1 May 1998, which disassociated option rights and bonds (Weiß 1999: 356).

Besides the collective agreement system, which determines fixed pay components, variable remuneration systems are becoming more and more frequent. These aim to motivate employees more strongly and strengthen their identification with the company by giving them a proprietary interest. The financial participation of employees in companies is an increasingly important way of organizing relations with employees in Germany. Employee participation is the general trend, firstly because of the

43 Nieber/Jaeger 2000: 45.

44 The agp estimates that about 200 companies have introduced stock option schemes.

growing pressure of competition due to globalization, and secondly because of the increasing attention being paid to the shareholder value concept. One of the ways in which shareholder value management seeks to attain its goal of increasing the value of the company is the implementation of remuneration systems for executive personnel designed to this end. In Germany 2,700 companies have granted interests worth DM 25 billion to 2.3 million employees (table 10); 250 additional firms do likewise each year (cf. Arbeitsgemeinschaft Partner in der Wirtschaft 2000: 2). However, this development is far more advanced in other EU countries. In Britain, for example, 5 million employees own shares in 20,000 firms, and in France the same number of employees have interests in 19,000 companies.[45]

The rationale for stock options stakes is that they encourage managers to 'think like owners' (Donkin 1999: 9). To date, stock options in Germany are a matter of limited experiment and are different in each company. Generally, their use is not very wide spread within companies that use them and they tend to be offered only to top management in large German companies, especially those which are oriented towards the shareholder value principle; some high tech companies on the *Neuer Markt* also use them. Stock options in Germany are generally only a supplement to normal salaries.[46]

Higher taxes than in the United States limit the impact of stock option plans. "In a culture where risk is not understood you penalize success", says Mr. Lokermann (executive director of Growth Plus, a pan-European association of high-growth companies) who is lobbying member states to bring tax rules on stock options in line with their transatlantic rivals. (Boer 2000: 30) In the U.S., employees pay a capital-gains tax of up to 40% on the profit they made from options, once the shares are sold. In Europe the top income tax rate ranges from 40% to 60% with social taxes up to 45% added on. European companies can expect to pay social tax as well, up to 45% of the option. In Germany, the picture is the following: the marginal income tax rate is 51%, and it will gradually fall to 42% in 2005. Additionally, the employer has to pay 20.5% tax and the employee about 20.5%, payable when the options are exercised – whereas in the U.S. it comes when the shares are sold (ibid.).

From a taxation perspective, option plans are interesting for shareholders in Germany only where profits from the exercise of options can be claimed as payroll costs, because this reduces net profit for the year and, accordingly, corporation tax. This is the case only with:

45 *Wirtschaftswoche*, No. 40/30 Sept. 1999: 142.

46 By international standards top German managers earn relatively little. The average CEO of a DAX 30 company earned "only" 1.7 million DM in 1997 (Balzer and Sommer 1998: 212). Standardized international compensation is becoming an issue due to the growing number of global mergers of German companies. In the case of the newly merged DaimlerChrysler the German CEO Jürgen Schrempp earns about 3 million DM annually while his American counterpart, Chrysler CEO Bob Eaton, earns about seven times as much. Ulrich Hartmann, CEO of VEBA, believes that "German companies are going to orient their remuneration systems more towards the American model" (Balzer and Sommer 1998: 215, our translation).

– SARs,
– bought options,
– buyback of own shares (cf. Winter 2000: 210).

It is not the case if contingent or approved capital is employed (ibid.) because no existing corporate funds are involved, but liquidity increased through the inflow of external funds. SARs and share buybacks also have the advantage that holdings and thus the value per share remain the same, so that old shares are not diluted are they are when share capital is increased (Weiß 1999: 363).

Given this situation, it is surprising that out of 43 German companies who participated in a recent study, only five had chosen the tax-saving constructs mentioned (Winter 2000: 244). This raises the question why the inefficient constructs detrimental to shareholders are preferred. One reason may be that the profits from the exercise of SARs are in principle liable to tax, whereas profits from the sale of shares on the basis of options are assessed differently depending on the effective date.

Winter also presumes "that objectively unjustifiable pay rises are to be obtained, … since profits from the exercise of options do not burden the profit and loss account, and it is hoped that pay rises will be introduced with the shareholders noticing as little as possible" (Winter 2000: 254).

This is in keeping with the inadequate information policy, especially about the value of option plans.[47] In the sample investigated by Winter, no draft resolution contained information on value (cf. Winter 2000: 250), which is in glaring contrast to international, especially American usage (ibid.). From the corporate governance point of view, we can only agree with Winter when he writes of the "failure of corporate control by shareholders and supervisory bodies" (ibid.).

Although no stock option culture can yet be said to exist in Germany, the country is nevertheless adapting to the international trend. No fewer than 9 of the DAX 30 companies introduced stock option plans for top management in 1999, only 8 do not yet have one, and New Market firms without such plans are the exception (von Haacke 2000: 65).

A study by Fides Management Consultants (2000) examines all 130 stock option plans introduced up to 1999. It shows that since 1996 the number of plans introduced each year has increased rapidly. In the first three quarters of 1999, 60 plans were established, almost as many as in the entire 13 previous years. In 1998 there were 42, in 1997 only 15, and in 1996 a mere 5. In over 60% of plans only the managing board and/or senior management participate. Increasingly – especially in new growth companies – lower echelon employees are included. Furthermore, the volume of plans has increased over time. Whereas before 1997, stock option plans rep-

47 That there can be unpleasant surprises is shown by a complaint against the VW AG. According the usual Black-Scholes computational formula, the five-year convertible issue approved in 1997 had a value of just under one billion DM in comparison to a dividend of DM 300 million (Spegel 1999: 171). At SAP, the € 239 million of distributed premiums from the employee program "Star" reduced pre-tax earning by 45% to € 95 million.

resented an average 2.3% of share capital, the figure in 1999 was about 5.7%. The factors influencing this development identified by the study are both enlargement of the target group and the mean increase in the number of options per participant.

The motivational impact of stock option plans has hardly been clarified and is seen critically by scholars. Winter (2000: 253) complains that most of the option plans under study take no account of dividend payments. This is important because stock option plans trigger the empirically demonstrable behavioral tendency among management to buy back shares instead of distributing the same amount in the form of dividends, "because the value per share c.p. remains higher if profits are not distributed" (ibid: 54). Since stock option plans are always introduced on the suggestion of management, it seems reasonable to assume that they are generally proposed only on the basis of insider information in expectation of business developing favorably. "A rise in price is then to be accounted for merely by the revelation of this insider information and not by any presumed incentive effect" (ibid: 68). This would confirm the reproach often made in connection with stock option plans that they serve only "to obtain more performance-based pay in advance of anticipated stock price increases" (Yermack 1997: 449).

In Germany, however, efforts are being made to counteract any self-service mentality on the part of managers by introducing hurdles to the exercise of options. One is indexation, i.e., making the exercise of options contingent on the rise in the share price being attained or surpassed as measured against a comparable share index. This means that – as is usually the case in the United States on maturity of options – a mere rise in the price of the shares of the company concerned is not sufficient, because a rise in price attributable merely to favorable cyclical conditions cannot be considered a particular achievement (von Haacke 2000: 66). The survey of 43 German companies also looked at this practice in more detail. In 82% of cases, the reference indices chosen were general German indices like DAX, CDAX or MDAX , in 12% of cases they were international sectoral indices and in 6% of cases they were self-chosen sectoral indices (Winter 2000: 240).

Another hurdle to exercising options in Germany is the two-year statutory waiting period. It is not possible to exercise options on the day they vest. The waiting period prevents options being exercised at a point in time when no increase in performance can have taken place owing to the option program.

Despite these attempts to restrict their exercise, it is argued that the precautions against possible abuse of insider information by those who hold stock options remain unsatisfactory and that there is a lack of information with regard to options that suggest that such plans do not serve the shareholder interest. In the study of 43 German firms, the vast majority of option plans were not seen to advance shareholder value, although they have usually been introduced with this justification (Winter 2000: 254).

To summarize the changes in the orientation of company management: as we have noted, top German managers are starting to implement shareholder value principles in their companies. Profitability goals, controlling systems, stock options, core business strategies, and stock market listing of company divisions are manifestations of new shareholder oriented activities whose origins paradoxically go back to industrial recession in the early 1990s. If institutional investors try to further the changes made by top-management, their pressure is sometimes resisted. Thus, the CEO of a pharmaceutical company has recently openly criticized the growing influence of investment funds:

> "I suggest taking a stronger line against some capital market actors who want to force companies to adopt their rules of playing the game." (Weishaupt 1999: 19, our translation)

6. Summary and Perspectives

In this report, four characteristic features of the changes in the German political Corporate Governance system were outlined. Firstly the extremely narrow basis of the shareholder-value economy was seen as being of concern mainly of the DAX 30 and of the Neuer Markt. Secondly there has been a gradual movement of all actors, with no 'big bang'-type deregulatory measures taken by the state, a slow unraveling of cross-share holdings and a cautious withdrawal of banks from their parental role in supervisory boards of industrial companies. Thirdly the processes inherent in co-determination have functioned as a barrier towards hostile border-crossing company takeovers. Finally, the adoption of shareholder-value principles has primarily occurred as part of internally driven process controlled by company management.

With regard to the first of these characteristic features, the "narrow basis" of shareholder value management, it is seen as being limited mostly to the DAX 30 group of companies and recently to have been introduced in a few flagship companies. There is, however, a notable growth in the adoption of practices commonly associated with shareholder-value management in an increasing number of companies and an increase of Neuer Markt activities, which conceivably will expand the breadth of such a management orientation within the German industrial landscape.

With regard to the second characteristic feature: the "gradual and cautious deregulation, slow unraveling of cross-shareholdings", there are indications of an acceleration of the change process. This is true in particular for the announced law on tax exemption of sales of shares by companies aimed at unraveling such spider's webs as shown in figure 1 (the cross-holdings). As was mentioned, the law intends to exempt from tax the sale of shares that joint stock companies (Kapitalgesellschaften) hold in other joint stock companies. As was quickly calculated by observers this could free up several dozen billions of Euro helping companies such as Allianz, VIAG and Deutsche Bank to pursue their global strategies.

It is worth noting that it is the social democrat-led government that is behind this radical approach with the explicit aim of modernizing and restructuring the German economy. "Deutschland AG", the Minister of Finance explained recently, has become fossilized. Globalized markets, however, would require flexible companies.[48] At the same time, the Green Party is preparing an even more radical approach. A recently published policy paper[49] demands that direct and indirect shareholdings of domestic companies should not exceed five per cent. In addition, it suggests that the use of proxy voting should be made more difficult by detailed regulation and the number of seats per individual on supervisory boards should be limited to five.

48 Federal Ministry of Finance: speech of the Federal Minister of Finance, Hans Eichel, on the New Year's reception of the Industrial Chamber of Commercial Industry; Cologne, 13th of January 2000, homepage of the Federal Ministry.

49 Bundestagsfraktion BÜNDNIS90/DIE GRÜNEN (ed.) (2000)

The pressure and the attractiveness for companies to mobilize their capital used hitherto for cross shareholdings can be seen in the announcement of Allianz to sell half of its shares held in Siemens (of which it holds 2.7%) through the sale of €1.7 billion in bonds exchangeable for Siemens shares. When the tax reform comes into force in 2002, DB Investor wants to sell its entire portfolio within two or three years. DB Investor owns 11.8% of DaimlerChrysler and 9.6% of Münchner Rück. Deutsche Bank would thus bring a market value of €20 billion onto the market, which corresponds to a third of its own market capitalization. Divestments like this are set to accelerate after the abolition of the capital gains tax on such transactions in 2001 and, as was pointed out by the Financial Times, "could expose several groups by making stakes available that could be used as a platform for an offer." At Siemens, the Financial Times points out, 90.5% of shares are held by unidentified investors (the Siemens family holds 6.8%, Siemens employees between 8 and 10%). Initiatives to deter predators, such as those who may be interested in acquiring Siemens, have certainly become a major topic of debate in the aftermath of the Mannesmann takeover[50] as companies with a widely distributed shareholder base seem particularly vulnerable. The list of companies subject to speculation about foreign bids therefore becomes longer and longer. BASF, Bayer, Henckel, Bayersdorf and Schering; RWE, VIAG, Veba, Metro and Karstadt, Quelle; Commerzbank, Dresdner Bank; Siemens, VW, BMW, MAN, Linde, Degussa-Hüls; and Deutsche Telekom, once the state has given up its majority stake.

An important element of stability has been noted in relation to the role of co-determination in German firms. It is evolving but does appear to remain a core element of corporate governance. It is therefore interesting to ask the what role co-determination played in the important case study with which this paper began – the Vodafone takeover of Mannesmann.

In fact, as the result of the takeover indicates, co-determination did not play the role of a "poison pill" to prevent the takeover. Yet the system of co-determination and the role of IG Metall as the predominant Union were not an unimportant part in the process from the first offer to the final agreement. The role of employees emerged at a number of different stages during the takeover.

In the first stage of the takeover process the different elements of the co-determination system played different, complementary and orchestrated roles. While the members representing labor on the supervisory board cooperated with the other board members and the executive board in developing a counter-strategy, the works councils and the Trade Unions mobilized resistance against the takeover. The threat of labor unrest and informal strike raised by various labor representatives including the chairman of the IG Metall at this stage had to be taken serious.

The supervisory board, labor and capital side and the various representatives were very homogeneous in their position vis-à-vis the takeover. The development of an integrated strategy for an independent Mannesmann which won approval by finan-

---

50 B. Benoit: "Siemens investors in plan to deter foreign predators", in: Financial Times, February 18th, 2000, p. 1

cial analysts and which was fully backed by the supervisory board led to an appeasement of the workforce, as it seemed to offer a realistic chance to fend off the hostile takeover. The Union at the same time tried to use its international connections, especially with the American AFL/CIO to exert influence on asset managers of workers pension funds to choose sides with the Mannesmann position.

The contract of agreement of the company merger was approved by the IG Metall and the labor actors of the co-determination structure when they saw their demands fulfilled. After Vodafone had met the demands the labor representatives on the board gave their consent to the agreement and IG Metall also declared its consent, despite criticism from works council representatives that employment security was not guaranteed. This highlights the other, less visible, face of the co-determination system which is the readiness to take responsibility for the decisions agreed between the partners once a conflict is settled, even when there is strong opposition and criticism.

What are the more general implications of the Mannesmann case? As was widely commented, the case has proven that even a flagship company rooted deeply in the Rhenish capitalism and with a strong co-determination system and Union representation can be taken over after an unsolicited offer. There was no mobilization of "Deutschland AG", the 'Hausbank', Deutsche Bank, and the government did not intervene.[51] There was no determined effort to seek a German solution by seeking a national "white knight" (even though there were some rumors in this regard envisaging that Siemens would take on this role).

Not only were there no efforts towards a "barbed wire defense" of Deutschland AG, it is particularly noteworthy that there was a determined effort to play by the rules, as the Financial Times acknowledged: "By pledging to eschew court actions, poison pills, white knights and other commonly-used US defense tactics, Mr. Esser appears to have laid the foundation for one of the keenest, fairest and most investor-friendly giant takeover battles."[52] Thus, the importance of the Mannesmann case rather than as a break-through/big bang event for shareholder value capitalism (the takeover of Mannesmann is just one of many events and factors driving into this direction) can be found more in its character as learning case. It is the first encounter with the hostile face of shareholder value capitalism and there was a conspicuous absence of regulation and experience in this field. Thus, takeover regulation was even weaker than in the UK and, moreover, there was a total lack of experience to be noted.

51 The low profile of the Deutsche Bank is particularly noteworthy. Since its former chief-executive Koppers had left the position of the supervisory board chairman upon retirement, the Deutsche Bank had sought for a less prominent role. Its representative J. Ackermann, relationship manager for global companies and institutions (and, more recently, designates CEO), became DB representative and took the position of the second deputy of the chairman.

52 *The Financial Times*, 6 December 1999

Appendix 1:
The Collective Bargaining System in Germany

The German collective bargaining system is characterized by autonomy, i.e., it is a system for negotiating pay and working conditions between labor and management free from governmental intervention. The negotiating parties are trade unions or confederations of trade unions and employers' associations or, in the case of plant or company agreements, individual employers.

Depending on the subject matter, three types of collective agreement can be distinguished:

– Wage and salary agreements, which settle pay scales for the various pay brackets, and define wage groups in terms of abstract or concrete job characteristics;

– Framework pay agreements, which settle pay systems and the principles for time rates, piece-work pay, and premiums;

– Basic or umbrella agreements (*Manteltarifverträge)* that settle other working condition issues such as working hours (daily, weekly, annual, life-time), leave, notice, bonuses for extra and shift work, special payments (e.g., 13th month), and arrangements on rationalization protection, humanization of work, and vocational training (Müller-Jentsch 1986: 196).

In additions, collective agreements settle terms and scope with regard to territory (area of application); occupation (sector); personal status (employee group) (Müller-Jentsch 1986: 189).

The area of application may be a company (plant/company agreement); a region (regional agreements for a collective agreement district); the whole country (federal agreement).

The provisions of the collective agreement are minimum standards that may not be undercut in companies bound by the agreement. Exceptions are: the advantage rule, and opening clauses.

The advantage rule under § 4 (4) of the Collective Agreement Act (TVG) gives priority to more favorable individual arrangements between employee and employer over collective arrangements.

Opening clauses under § 77 (3) of the Industrial Constitution Act (BetrVG) and § 4 (3) of the Collective Agreement Act provide for settlements below the standard rate in individual enterprises. However, the parties must agree. Opening cannot be imposed against their will (Konzen 1996:41).

For the term of a collective agreement the parties are under obligation to keep the peace i.e., neither side may take industrial action. The functions of free collective bargaining can be categorized into those of the employee and those of the employer.

For the employee:

- Protection (safeguarding the standard of living and tolerable working conditions)
- Distribution (participation in growing societal affluence)
- Participation (co-determination with regard to conditions for the utilization of labor).

For the employer:

- Cartel function (standardization of pay rates and working hours)
- Regulatory function (establishment of transparent, stable pay structures and working conditions)
- Pacification function (creating the will to reach amicable settlements and to avoid conflict) (Müller-Jentsch 1986: 160).

Globalization, individuation, and decentralization (Peren 1998: 29), and, not least of all, the extension of the West German collective agreement system to the new states in eastern Germany, where the economic starting conditions differed considerably from those in western parts of the country, have provoked criticism of the existing system.

The main complaints have been about: a lack of flexibility with regard to the needs of enterprises; overregulation and costs.[53]

The collective agreement system is felt to be to rigid because it offers no scope for adapting pay and other working conditions to the specific needs of the individual enterprise – this is the gist of the criticism. According to Schnabel: There is a lack of company-specific differentiation in wage and performance groups, qualifications, etc. despite overregulation in collective agreements (Schnabel 1995: 29). The right balance needs to be struck between centralized and decentralized regulatory levels, "which combine the old advantages with the new requirements" (Hundt 1998: 15).

Reform proposals therefore always envisage:

- broader corporate scope for action,
- greater company-related differentiation in collective agreement provisions,
- flexibilization of collective agreement contents to meet individual company conditions.[54]

Further demands include a return to minimum standards, deregulation; options, modules, menu solutions; introduction of statutory opening clauses; redefinition of the advantage rule.[55]

The introduction of statutory opening clauses would amount to permitting a general corporate opening of the collective agreement without taking account of the parties

53 cf. Hank 1998: 28; Hundt 1998: 15 and 49
54 cf. Beltz Rübelmann 1988: 63; Hundt 1998: 15; Murrmann 1995: 905
55 cf. Beltz Rübelmann 1988:63, Murrmann 1996: 49, Hundt 1998: 15

to the agreement and without establishing fixed, clearly defined facts (Konzen 1996: 41).[56]

Redefinition of the advantage rule would mean substandard, individual agreements being possible between employees and employers if this is to the advantage of the employers in the sense of increasing job security or eliminating a threat to the company (Konzen 1996: 63, Murrmann 1996: 51).

In this connection it should be stressed that most employers or the bodies representing them want to retain the principle of the area-wide agreement. They want to reform it, not abolish it. The reason is the repeatedly emphasized pacification and regulatory functions of the collective agreement (Murrmann 1996: 55, Hundt 1998: 15, etc.), which employers are anxious to preserve. It relieves the company of conflictual negotiations, thus keeping the peace and – especially– it takes account of the overall economic position, which, according to a BDA spokesman, "makes it easier to ward off exaggerated demands …" (Peren 1998: 30).[57]

This is confirmed by research findings to the effect that heavier competition, which automatically lowers earnings, has a significant negative impact on wage levels in agreement-bound enterprises (Jirjahn/Klodt 1999: 44). This is not the case in enterprises not bound by collective agreements if there is a works council (Jirjahn/Klodt 1999: 47). In the reverse case – if product market conditions are favorable – pay levels rise only in companies with a works council (Jirjahn/Klodt 1999: 50). Where profits increase owing to the introduction of new products, the same pattern is evident. Higher profits have a favorable impact on wage levels in companies not subject to a collective agreement. This indicates that returns on innovations in companies not subject to collective agreements are shared between the owners of the firm and the workforce. In bound companies, this company-specific remuneration component plays no role (Jirjahn/Klodt 1999: 47). The system of area-wide collective agreements therefore tends to have a moderating influence on wage levels.

Meyer (1995), too, concludes that above-scale payment helps increase costs more than a commitment to the rules of a collective agreement in itself. He notes that there was "no statistically confirmed difference" between the groups "agreement-bound without payments above company level" and those "not subject to collective agreement" (p. 136).

---

56 There are considerable objections both to redefining the advantage rule (Konzen 1996: 39, Murrmann:1996: 51) and to the demand for statutory minimum standards (Konzen:1996: 41) – especially from the associations (Murrmann 1996: 49) – because they eliminate the advantages of the area-wide wage agreement, namely the transparency function of standardization, which could open the door to dynamization of the wage levels, and shift pay disputes back to the enterprise level (Murrmann 1996: 49ff.).

57 Hundt goes still further, and, with reference to the need to retain the pacification function of the area-wide agreement, points out that the right to strike could, in the course of substituting collective agreements by company agreements, become virulent for works councils: "Whoever wants to give the works council a right to negotiate wages completely independently of the collective agreement cannot ultimately deny it the right to strike" (Hundt 1998: 15).

This is understandable if one remembers that union wage rates are in the nature of minimum wages oriented on the efficiency of average or marginal enterprises (Schnabel 1995: 29).

In Bellmann/Kohout's (1995) sample, 72% of firms are bound by collective agreements, of which 57% pay above agreed rates (p. 75), which means that these enterprises have the highest per capita expenditure (Meyer 1995: 136).

It is therefore no wonder that, when the pressure of costs rises, above rate payments are deducted from increases in negotiated wages, as Schnabel (1995) discovered for his sample on the basis of data from the early 90s (p. 28). Figures from the German Institute for Economic Research (DIW) for a later date confirm this. According to the DIW computation of standard and actual earnings, the proportion of above-rate payments declined continuously between 1997 and 2000.

In 1997, standard wages rose by 1.5% compared with the previous year whereas actual wages rose by only 1.2%, which means that 0.3% of above-rate payments must have been deducted from the increase in standard wages. In 1999 the figure was 0.9% and for the first half of 2000, during which period standard wages rose by 1.9% and actual wages by only 0.9%, it was 1%.

This means that the general reproach of inflexibility in area-wide wage agreements is not justified without qualification. It is easier to react flexibly to any deterioration in product market conditions by means of collective wage agreements than through wages negotiated at the company level, as Jirjahn/Klodt (1999) establish (p. 47) – but only in firms not bound by collective agreements without a works council (p. 49f.). Under favorable conditions, profits are also more widely distributed within the firm in companies not subject to collective agreements – but only in firms with a works council (p. 50). This shows that in bound companies the works council has no significant influence on wage levels (Jirjahn/Klodt 1999: 47). This confirms the thesis that collective wage agreements exercise a relief function with regard to company distribution disputes and lowers self-damaging distributive bargaining as v. Weizsäcker explicitly points out as one of the rewards of "Flächentarifverträge" (v. Weizsäcker 1999: 182). In spite of this favorable effect, though, there is a strong tendency towards a decline of sectoral bargaining coverage. A survey, carried out by the German Ministry of Labor, shows that in the west the number of private sector companies covered by a sectoral collective agreement dropped form 51.8% in 1995 to 49% by 1997 (EIRR 302 1999: 17). In the east coverage was only at 25.7% in 1997 (op. cit.) though figures differ significantly according to the industry: The coverage ranges from 73% in the consumers goods industry to 33.6% in the miscellaneous services in the west and from 52.2% in the mining and energy sector to 14.45 in the miscellaneous services in the eastern part of Germany (op. cit.). It is this difference in the coverage rate between the two part of Germany that shows where the threat to the German system of industrial relations comes from (French 2000: 213) since the situation in the east has "potential to provide a demonstration effect of things to come in the west" (Upchurch 2000: 89).

This pessimistic outlook is attenuated somehow if one looks at the factors affecting coverage. Company size for instance seems to play a major role whether a firm belongs to a sectoral employers' organization carrying out sectoral collective bargaining or not. There is hardly any difference between companies in the west and in the east employing at least 1,000 people. Coverage increases according to company size in both east and west. Lowest coverage is found in companies employing one to four people: There it ranges from 35.7% in the west to 18.9% in the east, whilst in companies employing at least 1,000 people it reaches 75% in the west and even 77.7% in the east. The highest coverage was even found in eastern companies employing between 500 and 999 people where it was 80.2% (EIRR 302 1999: 18).

The age of a company is also a factor that is important for the question whether a company belongs to a sectoral employers' association or not. The survey shows that companies founded after 1992 have been less inclined to join (op. cit.) – and this has supposedly been more often the case in the eastern part of Germany.

Appendix 2: Neuer Markt and Nasdaq: Main Listing Requirements and Ongoing Obligations

Regulation	Neuer Markt	Nasdaq
Legal basis	Neuer Markt Rules and Regulations German Stock Corporation and Stock Exchange acts	NASD Manual US regulations for securities
Equity capital base/ market capitalization/ total nominal value	Equity capital = € 1.5 million excl. the capital increase necessary for the IPO no requirement as regards market capitalization Total nominal value of at least € 250.000	At least one of the following criteria: "Net assets" of US$ 4 million market capitalization of US$ 50 million Net income over the last year or over two of the last three years: US$ 750,000
Free-float/minimum number of shareholders/issue volume	issue volume < € 100 million: free-float of at least 20%, recommended 25% issue volume > € 100 million: free-float can be lowered to 10% Minimum number of shares: 100,000 ordinary shares € 5 million issue volume	Free-float: at least one million shares at a total value of US$ 5 million (lowest selling price per share: US$ 4) Minimum number of shareholders: 300
Designated Sponsor/ Market Maker	two designated sponsors	three market makers
Prohibitions on share sales	Six month lock-up period for existing shareholders	Issuers must obey the reporting requirements no lock-up obligations between the issuer and the exchange (in practice, there are voluntary lock-up agreements, e.g. through contracts with the lead manager)
Use of IPO proceeds	Financing growth	no requirements
How long the company must have existed for	three years, at least one year	at least one year
Language	German/English (for foreign companies, as a rule it suffices to submit documentation in English)	English
Accounting/quarterly reports	IAS or US-GAAP quarterly reports	US-GAAP quarterly reports
Capital increase	at least 50% of the placed issuing volume	not necessary
Corporate governance		compliance with corporate-governance rules (e.g. at least two non-company members on the Board of Directors)

Source: vision+money special, July 2000, p. 16

Appendix 3: The Institutions of the Stock Corporation – Main Changes under the KonTraG

The 1998 Act brought mostly slight changes to the central institutions of corporate governance. The following section briefly describes the central institutions and the key changes introduced by the 1998 Control and Transparency Act (KonTraG):

1. General meeting and shareholders

The general shareholder meeting, and not the totality of shareholders, constitutes an independent institution in the German stock corporation. The function of the general meeting is internal decision making. The general meeting is not a permanent board like the supervisory and management boards. It has to be convened by the management board and the supervisory board in the following cases:

– in the cases determined by law or the articles of incorporation or
– if the well-being of the company so demands (§ 121 (1) AktG),
– by the management board (normal case) and/or by the supervisory board by a simple majority (§ 121 (2), § 111 (3)),
– by the shareholders, if their shares together amount to 5% of capital (§ 122 (1)), or
– by the management board, if the annual financial statements or the interim financial statements indicate a loss of half of total capital (§ 92 (1)).

(§ 125) A notice of the general meeting is to be published in the German Federal Gazette (Bundesanzeiger).

The general meeting has to make decisions by a simple majority. The law or the articles of incorporation may specify larger majorities or impose further requirements (§ 133), e.g., three-quarters and more of the votes to amend the articles (§ 179 (2)). The general meeting makes decisions only about the cases listed in § 119 AktG and can only decide about management problems if the management board has authorized it to do so (Hüffer 1999: 541-542).

The decision-making rules have been slightly changed by the KonTraG 1998:

– The general meeting can give itself an agenda; however, it has to obey the rules on preparing and conducting the meeting (§ 129 (1)).
– Multiple voting is no longer allowed (§ 12 Abs. 2) and votes are determined by the nominal capital of the shares represented (§ 134).

The rights of the general meeting are the following: (§ 119 (1)): appointment of the members of the supervisory board representing the shareholders (labor members are appointed either in accordance with the 1976 Co-Determination Act or the 1952 Industrial Constitution Act); release of management and supervisory boards from responsibility for the preceding year; appropriation of profits, amendment of the articles; discontinuance of the business; appointment of auditors to inspect events during the founding of a company or in the course of management; (§131 (1)): at the general meeting any shareholder may demand information from the management board about the business of the company to the extent needed for proper judgment.

The KonTraG introduces some modifications to the rights of the general meeting:

– The general meeting can now decide to buy back shares (§ 71 (1)) up to 10% of the capital.
– It can decide a conditional increase of capital for stock options for employees and management; again not more than 10% of capital (§ 192 (2, 3)). Options have to have an outcome goal, their distribution among employees has to be made clear, the time in which the options can be acquired and exercised as well. Exercise is restricted to at least two years (§ 193 (2)).

Shareholder rights not bound to the general meeting are the following: dividend rights (§ 58 (4)); the right to be informed of general meeting decisions by the management board (§ 125 (4)); countermotion by the shareholder (§ 126) within one week of convening of the general meeting.

2. The Management Board

The rights and duties of the management board in Germany are the following. The supervisory board appoints the members of the management board. The management board has to manage the stock corporation under its own responsibility (§ 76 (1)); members jointly conduct business (§ 77 (1)); it represents the company in and out of court (§ 78 (1)); members are appointed by the supervisory board for a maximum period of 5 years (repeated appointment is allowed) (§ 84 (1)); the management board has specific duties in the event of losses exceeding half of equity, of overindebtedness, and of insolvency (§ 92); members are to the due care and diligence (§ 93 (1)); in neglect of their duties they are liable to damages to the whole corporation (§ 93 (2).

The changes introduced by the KonTraG 1998 are:

– The management board has to report to the supervisory board on (§ 90 (1)) other fundamental questions of business planning (in particular financial, investment and personnel planning), the profitability of the company, the economic development and position of the company, business transactions with major impact,
– has to point to alternative ways to use proxy votes (§ 125 Abs. 1) in a convened general meeting and
– has to implement a risk-management system (§ 91 Abs. 2)

3. The Supervisory Board

The supervisory board has the following rights and duties:

The supervisory board consists of representatives of shareholders and employees. Minimum membership is 3, maximum 21 years (§ 95). Shareholder Representatives are elected for a maximum of 4 years (§ 102 (1)). The supervisory board (§111 (4)) is not allowed to conduct business, but the statutes of the company or the supervisory board can demand that specific transactions require its approval. If the supervisory board denies approval, the management board can demand the approval of the general meeting, where a qualifying majority of at least 75% is needed; the due diligence of § 93 AktG is also required of the members of the s.b. (§ 116); the number of seats of one person on the s.b. is limited to ten with an additional five mandates in the case of groups of companies. The supervisory board elects a chairman and a minimum of one vice-chairman (§ 107 (1)). It has the right to form subcommittees, to prepare negotiations, and to control the implementation of the decisions of the s.b. (§ 107 (3)). The supervisory board can control the management board retrospectively and anticipatively. Retrospective control is possible because the management board has to submit to the supervisory board the annual financial statements, the status report (once they have been prepared) and the proposed appropriation of earnings it is to submit to the general meeting (§ 170 (1, 2)). The preventive way is that the management board has to report on (§ 90 Abs. 1).

The changes of the KonTraG 1998 are:

- Chairman mandates are counted twice (§ 100 (2)); (§ 110 (3)) has to meet four times a year (listed companies).
- The supervisory board commissions the auditor to inspect the annual financial statements (§ 111 (2)),
- has to report to the management board which subcommittees have been formed and how often they have met
- for precautionary purposes the management board has to report on (§ 90 (1)) fundamental questions of business planning (in particular the finance, investment and personnel planning).

References

Adams, M. (1999): 'Cross Holdings in Germany', *Journal of Institutional and Theoretical Economics*, 1/155, 80-109.

Addison, J., Kraft, K., Wagner, J. (1993): 'German Works Councils and Firm Performance', in: B. Kaufmann and M. Kleiner (eds.): *Employee Representation: Alternatives and Future Directions*, Madison, WI: Industrial Relations Research Association, 305-338.

Addison, J., Schnabel, C., Wagner, J. (1996): 'German Works Councils, Profits and Innovation', *Kyklos* 49 (4), 555-582.

Addison, J., Siebert, W., Wagner, J., Wei Xiangdong (2000): Worker Participation and Firm Performance: Evidence from Germany and Britain. In: British Journal of Industrial Relations 38, 1, March, 7-48.

Arbeitsgemeinschaft Partner in der Wirtschaft e.V. (AGP) (2000): Press Release March 28th, 2000, www.agpev.de.

Balzer, A., Sommer, C. (1998): 'Mehr Geld für die Chefs', *Managermagazin*, September, 214 – 228.

Baums, T., Fraune, C. (1995): 'Institutionelle Anleger und Publikumsgesellschaft: Eine empirische Untersuchung', *Die Aktiengesellschaft* 3/95, 40. Jg., 97-112.

Baums, T., Frick, B. (1996): *Co-determination in Germany: The Impact on the Market Value of the Firm*, Arbeitspapier: Universität Osnabrück.

Bellmann, L., Kohout, S. (1995): Effektiv- und Tariflöhne in der Bundesrepublik Deutschland: Eine empirische Analyse auf der Basis des IAB-Betriebspanels. - In: Gerlach, K., Schettkat, R.: Determinanten der Lohnbildung. Theoretische und empirische Unersuchungen. Berlin: Edition Sigma, 72-93.

Beltz Rübelmann, M., et al. (1988): Die Tarifparteien gefährden die Tarifautonomie. In: Beltz Rübelmann, M., et al, Zukunft der Tarifautonomie – Mannheim, Wien, Zürich: BI-Wissenschaftverlag, 45-64.

Benoit, B. (2000): Siemens investors in plan to deter foreign predators, Financial Times vom 18.2.2000.

Berliner Zeitung vom 9.3.2002

Bertelsmann Stiftung; Hans-Böckler-Stiftung (eds.)(1998): *Mitbestimmung und neue Unternehmenskulturen – Bilanz und Perspektiven: Bericht der Kommission Mitbestimmung* Bertelsmann Stiftung: Gütersloh.

BfA Bundesversicherungsanstalt für Angestellte (2001): Zulagengeförderte Altersvorsorge – Rentenreform 2001, Berlin.

Boehmer, E. (1998): 'Who controls Germany? An exploratory analysis', Institut für Bank- und Versicherungswesen Humboldt-Universität zu Berlin, Arbeitspapier.

Boer, M. (2000): *The Wall Street Journal Europe*, 3.11.2000.

Bundestagsfraktion BÜNDNIS90/DIE GRÜNEN (ed.) (2000) Eckpunktpapier „Deutschland braucht mehr Sicherheit bei der Kontrolle von Unternehmen – Plädoyer für ein KonTraG 2“, Berlin.

Bundesverband Deutscher Kapitalbeteiligungsgesellschaften (BVK) – German Venture Capital Association (1999a): Statistik 1998.

Bundesverband Deutscher Kapitalbeteiligungsgesellschaften (BVK) – German Venture Capital Association (1999b): Yearbook.

Bundesverband Deutscher Kapitalbeteiligungsgesellschaften (BVK) – German Venture Capital Association (2000): Yearbook.

The Conference Board: U.S. Institutional Investors continue to dominate overseas markets. 6. May. 1999. – http: www.conference-board.org/search/dpress.cfm?pressid=4484.

DaimlerChrysler (1999): DaimlerChrysler mit wertorientiertem Controllingsystem (Zus.). – 15 March 1999, http://www.vwd.de/final/26101.html

Deeg, R. (1999):

Deutsch, K. (1997): 'Corporate Governance in Germany'. – *Deutsche Bank Research, Bulletin*, No. 4, 1997, 18-26.

Deutsches Aktieninstitut e.V. (ed.) (1998): DAI-Factbook 1998, Frankfurt a.M..

Deutsches Aktieninstitut e.V. (ed.) (1999a): DAI-Factbook 1999, Frankfurt a.M.

Deutsches Aktieninstitut e.V. (ed.) (1999b): *Privater Aktienbesitz in Deutschland: Aufwärtstrend setzt sich fort*, DAI-Kurzstudie 1/99, Frankfurt a.M..

Deutsches Aktieninstitut e.V. (ed.) (2001): DAI-Factbook 2001, Frankfurt a.M.

Deutsche Bank (1998): Press release, December 16th.

Deutsche Bank Research (1997): 'Corporate Governance in Germany', *Bulletin* No. 4: 18-29.

Deutsche Bundesbank (1997): 'Shares as financing and investment instruments', Monthly Report January 1997, 27-40.

Deutsche Bundesbank (1999a): Ergebnisse der gesamtwirtschaftlichen Finanzierung für Deutschland 1990 bis 1998, *Statistische Sonderveröffentlichung 4*, Frankfurt a.M.

Deutsche Bundesbank (1999b): Die gesamtwirtschaftlichen Finanzierungsströme im Jahr 1998, *Monatsbericht Juni 1999*, Frankfurt a.M.

Deutsche Bundesbank (1999c): 'On Corporate Financing in Germany and France: A. Compararative Analysis', Monthly Report *October 1999*, Frankfurt a.M.

Deutsche Bundesbank (2001a): 'Die gesamtwirtschaftlichen Finanzierungsströme im Jahr 2000', Monatsbericht Juni 2001, 15-40.

Deutsche Bundesbank (2001b): Erträge und Finanzierungsverhältnisse deutscher Unternehmen nach Rechtsformen, Monatsbericht Dezember 2001, 45-77.

DG Bank Research (1999): Neuer Markt – Juni 1999. Frankfurt a.M.

DG Bank Research (2000): Neuer Markt – April 2000, Frankfurt a.M.

Dilger, A. (1999): 'Erträge bei differenzierter Betriebsratsbetrachtung – Erste Ergebnisse einer Untersuchung des NIFA-Panels', in: L. Bellmann, S. Kohaut and M. Lahner (eds.): *Zur Entwicklung von Lohn und Beschäftigung auf der Basis von Betriebs- und Unternehmensdaten,* Nürnberg: Institut für Arbeitsmarkt- und Berufsforschung der Bundesanstalt für Arbeit, 55-75.

Dohmen, F. (1998): *Die Macht der Banken. Das Netzwerk der Deutschland AG*, Supplement der Zeitschrift Sozialismus. Hamburg: VSA-Verlag.

Donkin, R. (1999): 'Riches for the few', *Financial Times*, 26.2.1999, 9.

Eberwein, W., **Tholen, J.** (1990): *Managermentalität: Industrielle Unternehmensleitung als Beruf und Politik*, Frankfurt/M.: Frankfurter Allgemeine Zeitung.

Eberwein, W., Tholen, J. (1993): *Euro-manager or splendid isolation? International management – an Anglo-German comparison,* Berlin/New York: Walter de Gruyter.

EIRR 302 (2000): Decline of sectoral bargaining coverage, 16-18.

Ehren, H., Enzweiler T. (2002): Cromme allein zu Haus, Financial Times Deutschland vom 5.3.2002.

European Comission (2002): Report of the High-Level Group of Company Law Experts on Issues Related to Takeover Bids, 10. January 2002, Brussels.

Fides Managements Consultants (2000): *Aktienoptionsprogramme und Stock Appreciation Rights in Deutschland – Eine Studie.* 2000-11-20.

Financial Times vom 6.12.1999

Financial Times vom 23.10.2000

Financial Times Deutschland vom 4.7.2000, Venture capital statt Fußball.

Financial Times Deutschland vom 5.3.2002

FitzRoy, F., **Kraft, K.** (1993): 'Economic Effects of Codetermination', *Scandinavian Journal of Economics* 95 (3), 365-375.

Frankfurter Allgemeine Zeitung vom 26.7.2000

Frankfurter Allgemeine Zeitung vom 2.8.2000, Germany is Becoming a Nation of Shareholders.

French, S. (2000): The Impact of Unification on German Industrial Relations. In: German Politics, Vol. 9, No. 2, 195-216.

Gerum, E. (1991): 'Aufsichtsratstypen – Ein Beitrag zur Theorie der Organisation der Unternehmensführung', *Die Betriebswirtschaft* 51/6, 719-731.

Gerum, E. (1998): *Mitbestimmung und Corporate Governance*. Expertise für das Projekt 'Mitbestimmung und neue Unternehmenskulturen' der Bertelsmann Stiftung und der Hans-Böckler-Stiftung. Gütersloh: Verl. Bertelsmann Stiftung.

Gibbs, P. (1999): *Mergers and Acquisitions Research*. Report of 15. April 1999, JP Morgan Securities, unpublished.

Gold, M. (1999): Innerbetriebliche Einflüsse auf die Beschäftigungsanpassung - Eine empirische Analyse mit den Daten des Hannoveraner Firmenpanels - 99-122.

Haacke, B. von (2000): Gehälter unter Druck. – In: Wirtschaftswoche Nr. 8/17.2.2000. 64-66.

Handelsblatt vom 20.4.2000.

Handelsblatt vom 2.8.2000, Investment Funds Attract Millions of New Investors.

Handelsblatt vom 14.3.2002, Breuer fürchtet Standortnachteile**.**

Hank, R. (1998): Pro und Contra. - In: Der Arbeitgeber, Heft 17, 28.

Harnischfeger, U. (1999a): 'A different way of doing business.' *Financial Times* (special edition), 1. June, X.

Harnischfeger, U. (1999b): 'Siemens' chief is no stereotype.' *Financial Times* (special edition), 1. June, XIV.

Harnischfeger, U. (1999d): 'Metallgesellschaft considers US listing', *Financial Times*, 30. June, 14.

Hassel, A. (2000): Organisationsreform und Organisationsreformen. In: Gewerkschaftliche Monatshefte 3, 129-139.

Hundt, D. (1998): Reformrückstand in der Sozialpolitik. - In: Der Arbeitgeber, Heft 1/2, 12-15.

Jackson, G., Vitols, S. (1999): 'Pension Regimes and Financial Systems: Between Social Security, Market Liquidity, and Corporate Governance', forthcoming, 1999.

Jensen, M., Meckling, W. (1979): 'Rights and Production Functions: An Application to Labor-managed Firms and Codetermination', *Journal of Business* 52/4, 469-506.

Jirjahn, U. (1997): *Effizienzwirkungen von Erfolgsbeteiligung und Partizipation – eine mikroökonomische Analyse*, Dissertation. Universität Hannover.

Jirjahn, U., Klodt, T. (1999): 'Lohnhöhe, industrielle Beziehungen und Produktmärkte', in: L. Bellmann and S. Kohaut and M. Lahner (eds.): *Zur Entwicklung von Lohn und Beschäftigung auf der Basis von Betriebs- und Unternehmensdaten*. Nürnberg: Institut für Arbeitsmarkt- und Berufsforschung der Bundesanstalt für Arbeit, 27-54.

Jürgens U., Rupp, J., Vitols, K. in cooperation with B. Jäschke-Werthmann (2000): *Corporate Governance und Shareholder Value in Deutschland*, WZB discussion paper FS II 00-202. Berlin: Wissenschaftszentrum Berlin

Lawrence, P. (1980): *Managers and management in West-Germany,* London: Croomhelm

L.E.K. (2000): Analysis of Success Factors by going public, München.

Leminsky, G. (1998): *Bewährungsproben für ein Management des Wandels. Gewerkschaftliche Politik zwischen Globalisierungsfalle und Sozialstaatabbau*, Berlin: Edition Sigma.

Konzen, H. (1996): Die Tarifautonomie zwischen Akzeptanz und Kritik. In: Zohlnhöfer, Werner (ed.): Die Tarifautonomie auf dem Prüfstand. Berlin: Duncker und Humblot, 25-42.

Korn/Ferry International (ed.) (1998): *European Boards of Directors Study 1998*.

Markovits, A. (1982): *Political Economy of West Germany: The Model of Deutschland.* New York: Preager.

Meyer, W. (1995): Tarifbindung – Ein Hemmnis auf dem Weg zu niedrigeren Lohnkosten? – In: Schasse, Ulrich, Wagner, Joachim (ed.): Erfolgreich Produzieren in Niedersachsen. Untersuchung mit Daten aus der ersten Welle des Hannoveraner Firmenpanels. – Hannover: NIW-Vortragsreihe, Bd. 10, 125-143.

Millar, J. (1979): *British management versus German management. A comparison of organisational effectiveness in West German and UK factories*. Farnborough: Saxon House.

Müller-Jentsch, W. (1986): Soziologie der industriellen Beziehungen. Eine Einführung. – Frankfurt/New York: Campus.

Murrmann, K. (1996) - In: Berthold, N., Zohlnhöfer, W. (eds.): Die Tarifautonomie auf dem Prüfstand. – Berlin: Duncker und Humblot, 43-56.

Nieber, T., Jäger, R. (2000): Spannungsfelder zur Mitbestimmung – Denkanstöße – über Anforderungen an die Gewerkschaften, in: Die Mitbestimmung, Nr. 5, May 2000, 44-45.

Nürk, B. (1998): 'Institutional Investors and their implications for financial markets in Germany', in OECD (ed.) (1998) *Institutional investors in the new financial landscape,* 179-195.

OECD Economic Surveys. Germany 1995

OECD Economic Surveys. Germany 1998

O'Sullivan, M. (2000): Contests for Corporate Control: Corporate Governance and Economic Performance in the United States and Germany, Oxford University Press.

Peren, K. (1998): Flächentarif. Nach dem Spiel ist vor dem Spiel. – In: Der Arbeitgeber, Heft 17, 29-32.

Porter, M. (1990): *The competitive advantage of nations,* New York: Free Press.

Sadowksi, D. (1997): *Mitbestimmung – Gewinne und Investitionen*, Expertise für das Projekt ‚Mitbestimmung und neue Unternehmenskulturen'. Gütersloh: Bertelsmann Stiftung.

Schefczyk, M (2000): Finanzieren mit Venture Capital. Grundlagen für Investoren, Finanzintermediäre, Unternehmer und Wissenschaftler, Stuttgart, Schäffer-Poeschel.

Schmähl, W. (1994): Perspektiven der Alterssicherung in Deutschland, in: Wirtschaftsdienst, 74. Jg., H. 8, 390-395.

Schmidt, F., Seger, A. (1998): 'Arbeitnehmermitbestimmung, Allokation von Entscheidungsrechten und Shareholder Value'. *Zeitschrift für Betriebswirtschaft*, 68, 5, 453-473.

Schmidt, H., Drukarczyk, J., Honold, H., Prigge, S., Schüler, A., Tetens, G. (1997): Corporate Governance in Germany, HWWA – Hamburger Institut für Weltwirtschaftsforschung, Hamburg.

Schnabel, C. (1995): Übertarifliche Entlohnung: Einige Erkenntnisse auf Basis betrieblicher Effektivverdienststatistiken. – In: Gerlach, Knut, Schettkat, Ronald: Determinanten der Lohnbildung. Theoretische und empirische Untersuchungen. – Berlin: Edition Sigma, 28-49.

Spegel, H. (1999): Beredte Stille. – In: Wirtschaftswoche Nr .20/13.5.1999, 171-172.

Statistisches Bundesamt (1992): Finanzen und Steuern. Fachserie 14, Reihe 8 Umsatzsteuer 1990, Wiesbaden.

Statistisches Bundesamt (1994): Finanzen und Steuern. Fachserie 14, Reihe 8 Umsatzsteuer 1992, Wiesbaden.

Statistisches Bundesamt (1996): Finanzen und Steuern. Fachserie 14, Reihe 8 Umsatzsteuer 1994, Wiesbaden.

Statistisches Bundesamt (1998): Finanzen und Steuern. Fachserie 14, Reihe 8 Umsatzsteuer 1996, Wiesbaden.

Statistisches Bundesamt (1999): Finanzen und Steuern. Fachserie 14, Reihe 8 Umsatzsteuer 1997, Wiesbaden.

Statistisches Bundesamt (2000): Finanzen und Steuern. Fachserie 14, Reihe 8 Umsatzsteuer 1998, Wiesbaden.

Statistisches Bundesamt (2001): Finanzen und Steuern. Fachserie 14, Reihe 8 Umsatzsteuer 1999, Wiesbaden.

Steiger, M. (1998): Institutionelle Investoren und Corporate Governance – eine empirische Analyse, ZEW 1998, Dokumentation Nr. 98-05

Streeck, W. (1995): 'Works Councils in Western Europe: Cooperation Through Representation', in: Joel Rogers and Wolfgang Streeck (eds.): *Works Councils, Consultation, Representation, and Cooperation in Industrial Relations*, Chicago: University of Chicago Press, 313-348.

Streeck, W. (2001): In: Tagesspiegel, 13.2.2001.

Süddeutsche Zeitung vom 4.7.2000, The Human Being is More Important than Any Figure.

Tagesspiegel (a) vom 18.10.2000

Tagesspiegel (b) vom 2.8.2000.

Tagesspiegel (c) vom 13.2.2001.

Upchurch, M. (2000): The Crisis of Labour Relations in Germany. In: Capital and Class, 70, 65-93.

Vision+money special, July 2000, p. 16.

Vitols, S. (1999): *The Reconstructing of German Corporate Governance: Capital Market Pressures or Managerial Initiatives?* Paper prepared for the conference 'The Political Economy of Corporate Governance in Europe and Japan', European University Florence, June 10-11.

Vitols, S. (2000): Frankfurt's Neuer Markt and the IPO Explosion: Is Germany on the road to Silicon Valley yet?, unpublished paper, Wissenschaftszentrum Berlin, Oktober 2000.

Wall Street Journal vom 20.8.1998

Wehling, Margret (2000): Mitbestimmung in virtuellen Unternehmen? In: Industrielle Unternehmungen, 7. Jg., H. 2, 131-156.

Weishaupt, G. (1999): 'Vorstände kritisieren die Macht der Fonds', Handelsblatt, Nr. 89, 10.5.1999, 19.

Weiß, D. M. (1999): Aktienoptionsprogramme nach dem KonTraG. – In: Zeitschrift für Wirtschafts- und Bankrecht, 53. Jg., Nr. 8, 353-404.

Weizsäcker, C. C. von (1999): Mitbestimmung und Shareholder Value. In: Gewerkschaftliche Monatshefte, 177-184.

Wenger, E., Kaserer, C. (1998): 'German Banks and Corporate Governance: A Critical View', in K. Hopt, H. Kanda, M. Roe, E. Wymeersch and S. Prigge (eds.) *Comparative Corporate Governance. The State of the Art and Emerging Research,* Clarendon Press: Oxford.

Windolf, P. (2000): The Structure of Corporate Networks, Paper presented on the first workshop of the Research Network on Corporate Governance Network, 23.-24. June 2000

Windolf, P., Beyer, J. (1995): 'Kooperativer Kapitalismus. Unternehmensverflechtungen im internationalen Vergleich', *Kölner Zeitschrift für Soziologie und Sozialpsychologie* 1/47, 1-36.

Winter , S. (2000): Optionspläne als Instrument wertorientierter Managementvergütung. – Frankfurt am Main: Europäischer Verlag der Wissenschaften.

Wirtschaftswoche Nr. 15 / 8.4.1999

Wirtschaftswoche Nr. 40 / 30.9.1999

Wirtschaftswoche Nr. 29 /15.7.2000, Urge to Greatness.

Wymeersch (1998): in K. Hopt, H. Kanda, M. Roe, E. Wymeersch and S. Prigge (eds.) *Comparative Corporate Governance. The State of the Art and Emerging Research,* Clarendon Press: Oxford.

Yermack, D. (1997): Good Timing: CEO Stock Option Awards and Company News Announcements. – In: The Journal of Finance, Vol. LII, No. 2, 449-476.

Veröffentlichungsreihe der Abteilung **Regulierung von Arbeit**
des Forschungsschwerpunkts Technik-Arbeit-Umwelt des
Wissenschaftszentrum Berlin für Sozialforschung

1998

FS II 98-201 **Frieder Naschold:** Ökonomische Leistungsfähigkeit und institutionelle Innovation – Das deutsche Produktionsregime im internationalen Regimewettbewerb, 56 S.

FS II 98-202 **Jochen Lang, Frieder Naschold, Bernd Reissert:** Reforming the implementation of European Structural Funds. A next development step, 60 S.

FS II 98-203 **Karin Hirschfeld:** Auf verschlungenen Pfaden zum High-Tech-Produkt: Das Digitalfunkkonsortium – eine strategische Allianz und ihre Folgen, 56 S.

FS II 98-204 **Gerd Bender:** Entstandardisierte Formen der Entgeltbestimmung - Neuere Entwicklungen bei der Leistungsvergütung und der Personalbeurteilung. 41 S.

FS II 98-205 **Frieder Naschold, Christoph Reichard, Manfred Röber, Alexander Wegener (Hg.):** „Verwaltungsreform auf Ministerialebene" – Dokumentation zur Fachtagung am 9. Juni 1998 am Wissenschaftszentrum Berlin für Sozialforschung. 90 S.

FS II 98-206 **Maria Oppen, Alexander Wegener:** Restrukturierung der kommunalen Dienstleistungsproduktion – Innovationsfähigkeit deutscher Kommunen in internationaler Perspektive. 36 S.

FS II 98-207 **Maria Oppen, Elke Wiechmann:** Frauenförderpläne unter Reformdruck – Effektivität und Innovationserfordernisse am Beispiel der niedersächsischen Stufenpläne. 70 S.

FS II 98-208 **Hermann Hibbeler:** „Markttest" öffentlicher Dienstleistungen. Einführung von Wettbewerb durch flächendeckende Angebotsbeiziehung – Konzept des Personalrates Stadt Detmold. 35 S.

FS II 98-209 **Stephan Seip:** Netzwerkbildung im globalen Wettbewerb. Transnationalisierung und Standardisierung im Telekommunikationssektor. 76 S.

1999

FS II 99-201 **Gerlinde Dörr, Tanja Kessel:** Restructuring via Internationalization. The Auto Industry's Direct Investment Projects in Eastern Central Europe. 24 S.

FS II 99-202 **Helmut Drüke:** Regulierungssysteme in der internationalen Telekommunikation, 55 S.

FS II 99-203 **Gerlinde Dörr, Tanja Kessel:** Mehr als ein Nullsummenspiel? Die neue Standortkonkurrenz zwischen Ost und West.
More Than a Zero Sum Game? The New Locational Competition Between East and West. Zweisprachig, 19 S.

FS II 99-204 **Frieder Naschold, Ulrich Jürgens, Inge Lippert, Leo Rennecke:** Vom chandlerianischen Unternehmensmodell zum Wintelismus, 26 S.

2000

FS II 00-201 **Volker Hielscher:** Entgrenzung von Arbeit und Leben? Die Flexibilisierung von Arbeitszeiten und ihre Folgewirkungen für die Beschäftigten. Eine Literaturstudie, 64 S.

FS II 00-202 **Ulrich Jürgens, Joachim Rupp, Katrin Vitols, unter Mitarbeit von Bärbel Jäschke-Werthmann:** Corporate Governance and Shareholder Value in Deutschland – Nach dem Fall von Mannesmann – Paper revisited (Ulrich Jürgens), 34 S.

FS II 00-203 Die Abteilung „Regulierung von Arbeit" – Aktuelle Projekte und Veröffentlichungen 1988 bis 2000, 65 S.

2001

FS II 01-201 **Holger Straßheim:** Der Ruf der Sirenen – Zur Dynamik politischen Benchmarkings. Eine Analyse anhand der US-Sozialreformen, 27 S.

FS II 01-202 **Hengyi Feng, Julie Froud, Sukhdev Johal, Colin Haslam, Karel Williams:** A New Business Model?, 36 S.

FS II 01-203 **Gerlinde Dörr, Tanja Kessel:** Kooperation und Asymmetrie. Das Entwicklungsprofil eines betrieblichen Ost-West-Projekts, 54 S.

FS II 01-204 **Christoph Scherrer:** New Economy: Explosive Growth Driven by a Productivity Revolution?, 19 S.

FS II 01-205 **Christoph Scherrer:** Jenseits von Pfadabhängigkeit und „natürlicher Auslese": Institutionentransfer aus diskursanalytischer Perspektive, 26 S.

2002

FS II 02-201 **Gerlinde Dörr, Tanja Kessel:** Cooperation and Asymmetry. The Development Profile of an East-West Corporate Project, 41 S.

FS II 02-202 **Ulrich Jürgens, Heinz-Rudolf Meißner, Ulrich Bochum:** Innovation und Beschäftigung im Fahrzeugbau – Chancen und Risiken, 30 S.

Bei Ihren Bestellungen von WZB-Papers schicken Sie, bitte, unbedingt einen an Sie adressierten ***Aufkleber*** *mit, sowie* ***je Paper*** *eine* ***Briefmarke im Wert von € 0,51*** *oder einen "****Coupon Réponse International****" (für Besteller aus dem Ausland).*

Please send a ***self-addressed label*** *and* ***postage stamps in the amount of € 0,51*** *or a* ***"Coupon-Réponse International"*** *(if you are ordering from outside Germany) for* ***each*** *WZB-Paper requested.*

Bestellschein — *Order Form*

Paßt im Fensterumschlag! ● Designed for window envelope!

An das
Wissenschaftszentrum Berlin
für Sozialforschung gGmbH
PRESSE- UND INFORMATIONSREFERAT
Reichpietschufer 50

D-10785 Berlin

Absender ● Return Address:

____

____

____

____

Hiermit bestelle ich folgende(s)Discussion Paper(s) ● Please send me the following Discussion Paper(s)

Autor(en) / Kurztitel ● Author(s) / Title(s) in brief	Bestellnummer ● Order no.